

Brandywine / BTB Southern Region Neighborhood Coalition

The Mission at the B/TB, Coalition is to create and maintain an environment where business and community will prosper by supporting all projects and activities which will contribute to the positive growth and quality of life.

Delivered by email

January 10, 2018

Brittany Martinez
Case Manager
Office of Civil Rights
U.S. Environmental Protection Agency
Washington, DC 20460
Martinez.Brittany@epa.gov

Lilian S. Dorka
Deputy Director, Interim Director
Office of Civil Rights
U.S. Environmental Protection Agency
Washington, DC 20460
Dorka.Lilian@epa.gov

Re: DOT# 2016-0361 / EPA File Nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3

Dear Ms. Brittany Martinez:

(b) (7)(A)

In providing input for consideration the following document is the main Proposal of Community Recommendations.
BTB_ECCB_08JAN18_EPAVolAgrProposal_02a.pdf

The files listed below are the BTB Coalition ECCB working group reference documents.

ECCB Work'n Documents Folder

1. Exh01_BT2017-01-06-Response to Circuit Court-CAL16-34965.doc.pdf
2. Ref01_ECCB Questions for PSC 08JAN18.pdf
3. Ref02_Powell Resolution Document.pdf
4. Ref03_BT2017-02-01-Definitions-Glossary.pdf
5. Ref04_BT2017-02-01-CompPlan_01a.pdf
6. Ref05_BT2017-02-01-MDAgencyPlans_01a.pdf

The attached files are reference files used to compile data.

Reference DOC's Folder

1. 03Scoping.pdf
2. What_is_NEPA_and_the_Scoping_Process_2009.pdf

The BTB Coalition has the following questions;

1. Is there an Investigative Plan?
2. Are there Request(s) for Information (RFI);
 - (1) Additional information being requested of the recipient(s) or complainant(s) in light of the issues under investigation, and
 - (2) Specific timeframes for recipients and/or complainants response to the RFI.
3. Is there a Letter of Findings and if so, can that be provided to us.
4. Any Agency response verbal or written to the filed Title VI Complaint.

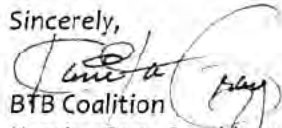
Page 2 of 2 – Proposal Community Agreement Recommendations

(b) (7)(A)



Thank you for your time and consideration. If you have any question no not hesitate to contact us.

Sincerely,



BTB Coalition
Kamita Gray, President

CC: Administrative Files
BTB Coalition
2BridgeCDX Trustees

Harrison, Brenda

From: Golightly-Howell, Velveta
Sent: Saturday, May 21, 2016 8:17 AM
To: Dorka, Lilian; Temple, Kurt; Bachle, Laura; Harrison, Brenda
Subject: Fwd: Initial Response of Mattawoman Energy, LLC to the May 11, 2016 Complaint under Title VI of the Civil Rights Act of 1964
Attachments: 5 20 Ltr to EPA and DOT re Title VI (and Attachments).pdf; ATT00001.htm

FYI and records.

Velveta

Sent from my iPhone

Begin forwarded message:

From: "Shavitz, Ian" <IShavitz@AKINGUMP.com>
To: "civil.rights@dot.gov" <civil.rights@dot.gov>, "phmsa.civilrights@dot.gov" <phmsa.civilrights@dot.gov>, "Daria.Neal@usdoj.gov" <Daria.Neal@usdoj.gov>, "Golightly-Howell, Velveta" <Golightly-Howell.Velveta@epa.gov>, "Title VI Complaints" <Title_VI_Complaints@epa.gov>
Cc: "ladawn.duncan.ctr@dot.gov" <ladawn.duncan.ctr@dot.gov>
Subject: Initial Response of Mattawoman Energy, LLC to the May 11, 2016 Complaint under Title VI of the Civil Rights Act of 1964

Attached please find Mattawoman Energy, LLC's Initial Response to the May 11, 2016 Complaint filed against the Maryland Public Service Commission (PSC), the Maryland Department of the Environment (MDE) and the Maryland Department of Natural Resources (MDNR) alleging violations of Title VI of the Civil Rights Act of 1964 in connection with the PSC's issuance of a Certificate of Public Convenience and Necessity (CPCN) for the Mattawoman Energy Center project.

Thank you for your consideration.

Ian Shavitz

Ian A. Shavitz
AKIN GUMP STRAUSS HAUER & FELD LLP
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Fax: +1 202.887.4288 | ishavitz@akingump.com <<mailto:ishavitz@akingump.com>> | [akingump.com](http://www.akingump.com) <<http://www.akingump.com>> | Bio <<http://www.akingump.com/ishavitz>>

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Akin Gump

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IAN A. SHAVITZ

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ishavitz@akingump.com

May 20, 2016

VIA EMAIL AND OVERNIGHT MAIL

Leslie Proll
Director, Office of Civil Rights
Department of Transportation
DOCR (S-30)
1200 New Jersey Ave., S.E.
Washington, DC 20590

Daria Neal
Deputy Chief, Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Rosanne Goodwill
Director, Office of Civil Rights
Pipeline and Hazardous Materials Safety Admin.
Room E27-117
1200 New Jersey Ave., S.E.
Washington, DC 20590

Velveta Golightly-Howell
Director, Office of Civil Rights
Environmental Protection Agency
Mail Code 1210A
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Re: Initial Response of Mattawoman Energy, LLC to Complaint under Title VI of the
Civil Rights Act of 1964

Dear Ms. Proll, Ms. Goodwill, Ms. Neal, and Ms. Golightly-Howell:

We are writing on behalf of Mattawoman Energy, LLC (Mattawoman Energy), which holds a Certificate of Public Convenience and Necessity (CPCN) for the Mattawoman Energy Center (Project) issued by the Maryland Public Service Commission (PSC) on November 13, 2015. On May 11, 2016, Earthjustice, on behalf of Brandywine / TB, Southern Region Neighborhood Coalition and Patuxent Riverkeeper (Complainants), filed a Complaint under Title VI of the Civil Rights Act of 1964 against the PSC, Maryland Department of the Environment (MDE) and the Maryland Department of Natural Resources (MDNR) (collectively, the state environmental agencies) seeking, among other relief, the withdrawal of the Project's CPCN.

As the CPCN holder, Mattawoman Energy has a significant interest in the outcome of the Complaint, and therefore files this Initial Response to provide information for the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Environmental Protection Agency

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(EPA) to consider in adjudicating the Complaint, and requests that PHMSA and EPA reject the Complaint for the reasons stated herein.¹

EXECUTIVE SUMMARY

PHMSA and EPA should dismiss the Complaint because there is pending litigation in Maryland state court that concerns the same underlying facts, issues, and substantive allegations, and seeks identical relief (*i.e.*, rescission of the CPCN and remand of the proceeding back to the PSC). As explained below, Title VI policy and precedent, as well as prudential considerations, dictate that a Title VI complaint should not move forward when there is pending litigation (i) concerning substantially the same issues and allegations or (ii) that would affect the outcome of the Title VI complaint. In this case, both bases apply. The Maryland litigation addresses, among other things, whether the PSC properly denied a request to intervene in the proceeding by a group of proposed intervenors seeking to submit testimony and address environmental and social justice issues associated with the CPCN (*i.e.*, the stated basis for the Title VI Complaint). The Maryland litigation also seeks rescission of the CPCN and remand to the PSC for further proceedings in which proposed intervenors can participate and provide information on social justice and environmental issues (*i.e.*, the same relief sought in the Title VI Complaint).

The Complaint should be dismissed as to claims against MDE and MDNR specifically for the additional reason that the Complaint solely concerns issuance of the CPCN by the PSC. MDE and MDNR, which play a strictly advisory role in the CPCN process, did not issue the CPCN or have any jurisdiction or legal authority to prevent the PSC from issuing the CPCN. In addition, MDE and MDNR's participation in the PSC's process of considering the CPCN application occurred long before the PSC issued the CPCN and more than 180 days before Complainants filed their Title VI Complaint. Therefore, the Complaint against MDE and MDNR is not only substantively deficient, but also time barred.

THE PSC PROCESS

Mattawoman Energy provides the following background information concerning PSC's CPCN process to assist PHMSA and EPA in reviewing and considering Mattawoman Energy's Initial Response. Understanding the PSC process is necessary to understand the context of the pending litigation in Maryland concerning the CPCN and Title VI-related claims, and the limited advisory role MDE and MDNR play in that process.

¹ If PHMSA and EPA accept the Complaint and institute a Civil Rights Act investigation, Mattawoman Energy reserves the right to submit a response addressing the merits of the Complaint.

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Any person wishing to construct a generation station in Maryland must first obtain a CPCN from the PSC.² Maryland's public utilities law establishes a specific process that the PSC must follow in considering CPCN requests and determining whether to grant a CPCN.³ Under this process, which is administered by a PSC Law Judge, notice of the CPCN application is provided to numerous relevant state agencies,⁴ and the PSC allows interested persons the opportunity to intervene (if legal requirements are met),⁵ accepts and reviews testimony,⁶ reviews environmental reports,⁷ considers state agency and local government recommendations,⁸ and holds public hearings to gather evidence and hear public input on the proposed project.⁹ After reviewing the evidence in the record and public comments, and considering specific factors enumerated under Maryland law (which include the effect of the generating station on: economics, esthetics, historic sites, aviation safety, air and water pollution, waste generation, and the stability and reliability of the electric system),¹⁰ the PSC will either grant the CPCN unconditionally, grant the CPCN subject to conditions, or deny the CPCN application.¹¹ After the PSC issues its final decision granting or denying a CPCN, "a party or person in interest . . . that is dissatisfied by" the PSC's final decision may seek judicial review of the decision.¹²

While the PSC is the entity responsible for ruling on a CPCN application, Maryland law provides an advisory role for other state executive agencies in the CPCN process. MDNR, through its Power Plant Research Program (PPRP), is responsible for coordinating the reviews by these other state executive agencies of a CPCN application.¹³ In this role, PPRP collects input from the other state executive agencies, and prepares an evaluation of the potential environmental, social, and economic impacts of the proposed project.¹⁴ As part of this process, MDE and

² Md. Code Ann., Pub. Util. Cos. § 7-207(b)(1)(i).

³ *Id.*

⁴ *Id.* § 7-208(e).

⁵ See, e.g., Notice of Pre-Hearing Conference, PSC Case No. 9330, Item No. 3 (July 30, 2013).

⁶ See, e.g., Notice of Procedural Schedule, PSC Case No. 9330, Item No. 12 (Sept. 9, 2013).

⁷ See, e.g., Environmental Protection Agency Letter, PSC Case No. 9330, Item No. 99 (Aug. 20, 2015).

⁸ Md. Code Ann., Nat. Res. § 3-306; Md. Code Ann., Pub. Util. Cos. § 7-207(e).

⁹ Md. Code Ann., Pub. Util. Cos. § 7-207(d).

¹⁰ *Id.* § 7-207(e).

¹¹ *Id.* § 7-208(f).

¹² *Id.* § 3-202(a).

¹³ Md. Code Ann., Nat. Res. § 3-306.

¹⁴ Direct Testimony of Frederick S. Kelley, PSC Case No. 9330, Item No. 83, at 3-4 (July 10, 2015).

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MDNR also may evaluate and respond to public comments concerning environmental issues.¹⁵ The PPRP then, like other parties in the CPCN proceeding, provides the PSC with impact reports, written testimony, and recommendations concerning the proposed facility, including recommended conditions that PSC could attach to the CPCN should the PSC decide to grant it.¹⁶

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The State Court action concerning the CPCN is based upon the PSC Law Judge's allegedly improper denial of a Petition to Intervene during the PSC proceeding, which prospective intervenors claim resulted in civil rights-related allegations being excluded from PSC's consideration of whether to issue a CPCN. Specifically, as stated in their Petition to Intervene, the prospective intervenors sought to intervene to submit testimony in support of the following civil rights-related concerns:

- The Project would have “disparate and adverse impacts on minorities and low-income families”;
- Granting the CPCN would constitute “the environmental injustice of a state agency dumping multiple polluting plants in her minority-majority community with many low-income residents”;
- “The effect [of the Mattawoman Energy plant] will be disproportionately on racial minority and poor Maryland residents”;
- “[T]he application process has been unjust and racist because many community residents are poor and a large percentage are African American”;
- The region is “being targeted as a state-approved ‘sacrifice zone’ for industrial power generation and related waste disposal because of their ethnic and socioeconomic status”; and
- No party to the CPCN proceeding “had addressed in the record the adverse disparate impact on persons of color and low-income residents from the developing power generation ‘sacrifice zone.’”²¹

The petitioners in the State Court action have requested that the court reverse the PSC decision granting the CPCN, remand this case back to the PSC, and allow the petitioners to whom the

11, 2015 Petition for Judicial Review (with attachments) and March 10, 2016 Memorandum in Support filed in the State Court action are attached hereto as Attachment 1. *See also* Complaint at 6-7.

²¹ August 17, 2015 Citizens' Joint Petition to Intervene at 5-6, 10-11, 13, 16 (Petition) (Attachment 2).

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Complainants point to two specific prohibitions in EPA's Title VI regulations as the bases for the state environmental agencies' alleged discriminatory acts:

- 40 C.F.R. § 7.35(b) - Prohibiting using "criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race . . .";³³ and
- 40 C.F.R. § 7.35(c) - Prohibiting determining the "site or location of a facility that has the purpose or effect of . . . subjecting [individuals] to discrimination under any program or activity . . . on the grounds of race . . ."³⁴

²⁹ Direct Testimony on Behalf of the Maryland Department of Natural Resources – Power Plant Research Program, PSC Case No. 9330, Item No. 83 (July 10, 2015).

³⁰ Initial Recommended Licensing Conditions, PSC Case No. 9330, Item No. 83 (July 10, 2015).

³¹ Initial Recommended Licensing Conditions (Revised), PSC Case No. 9330, Item No. 85 (July 16, 2015).

³² See Proposed Order of Public Utility Law Judge, PSC Case No. 9330, Item No. 121, at 4-5 (Oct. 13, 2015) (quoting Md. Code Ann., Pub. Util. Cos. § 7-207(e)).

³³ 40 C.F.R. § 7.35(b).

³⁴ 40 C.F.R. § 7.35(c).

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Sincerely,



Ian A. Shavitz

⁴³ August 6, 2010 Partial Acceptance and Referral of Administrative Complaint, EPA File No.: 11R-09-R9.

⁴⁴ *Id.* at 2 (citing U.S. Dep't of Justice, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes*, at 35 (Sept. 1998)).

Attachment 1

December 11, 2015 Petition for Judicial Review (with attachments) and
March 10, 2016 Memorandum in Support

PETITION OF:

(b) 6



EARTHREPORTS, INC.
d/b/a Patuxent Riverkeeper
Patuxent Riverkeeper Center
17412 Nottingham Road
Upper Marlboro, Maryland 20772

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
*

* CIVIL ACTION NO. 24-C-1500683C
*

2015 DEC 11 PM 2:17
CIVIL DIVISION

of the decision of the Public Service Commission of Maryland ("PSC") in PSC Case No. 9330 approving Mattawoman Energy, LLC's application for a certificate of public convenience and necessity to construct a nominally rated 859 MW generating facility in Prince George's County, Maryland (Order No. 87234). (Proposed Order of Public Utility Law Judge attached as "Exhibit A"; Final Order Letter attached at "Exhibit B").

Petitioners were not parties to the agency proceeding. Petitioners have standing because they are interested persons pursuant to Md. Code (1998, 2008 Repl. Vol.), Public Utility Companies Article, § 3-202 and they are aggrieved by PSC's decision and order.

Respectfully submitted,

A handwritten signature in cursive script, reading "G. Macy Nelson" followed by a stylized flourish.

G. Macy Nelson, Esquire
David S. Lynch, Esquire
Law Office of G. Macy Nelson, LLC
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11th day of December, 2015 a copy of the foregoing Petition for Judicial Review was mailed first-class, postage pre-paid to:

Suede G. Kelly, Esquire
J. Porter Wiseman, Esquire
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036-1564

Kenneth G. Hurwitz, Esquire
Law Office of Kenneth G. Hurwitz
1100 17th Street, NW, Suite 901
Washington, DC 20036-4646

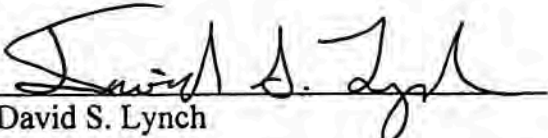
Jennifer J. Grace, Esquire
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David S. Lynch

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION *
OF MATTAWOMAN ENERGY, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE *
AND NECESSITY TO CONSTRUCT A
NOMINALLY RATED 859 MW GENERATING *
FACILITY IN PRINCE GEORGE'S COUNTY,
MARYLAND. *

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9330

Issued: October 13, 2015

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

Appearances:

Suedeem G. Kelly, Esquire, J. Porter Wiseman, Esquire,
and Kenneth G. Hurwitz, Esquire, for Mattawoman Energy,
LLC.

Paula M. Carmody, Esquire, and Theresa V. Czarski,
Esquire, for the Maryland Office of People's Counsel.

Brent A. Bolea, Esquire, and Steven M. Talson, Esquire,
for the Maryland Department of Natural Resources, Power
Plant Research Program.

Michael L. Casillo, Esquire, Cara M. Johnson, Esquire,
and Frank W. Miller, Esquire, for the United States Air
Force - Joint Base Andrews.

Jennifer J. Grace, Esquire, for the Staff of the Public
Service Commission of Maryland.

**Background and Description of Requested Certificate of Public
Convenience and Necessity**

This case was instituted upon a filing by Mattawoman
Energy, LLC ("Mattawoman") requesting the issuance of a Certificate
of Public Convenience and Necessity ("CPCN") to allow it to
construct a nominally rated 859 megawatt ("MW") combined-cycle



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combustion turbine electric generating facility in Prince George's County, Maryland ("the Project"). Changes to the Project now have the specifications including a 990 MW generating facility, a substation, a lead line, a water pipeline, and a gas pipeline, part of which is in Charles County, Maryland.

The site is on an 88 acre property that is 12.1 miles from Washington, D.C. It is in an area zoned by the County for industrial use and sits just south of a Super Fund site as designated by the Environmental Protection Agency ("EPA").

Procedural History

Mattawoman filed, on July 19, 2013, an application for a CPCN to construct a nominally rated 859 MW electric generating station in Prince George's County, Maryland. By letter dated July 22, 2013, the Commission delegated this proceeding to the Public Utility Law Judge Division to conduct the proceedings. A pre-hearing conference was held on August 23, 2013.

Appearances in the case were entered by the Staff of the Public Service Commission ("Staff"); the Maryland Office of People's Counsel ("OPC"); and the Maryland Department of Natural Resources, Power Plant Research Program ("PPRP"). A petition to intervene was granted to the United States Air Force - Joint Base Andrews ("JBA").

On September 10, 2013, Mattawoman filed its Environmental Review Document ("ERD") along with the direct testimony of Steven Tessem, Senior Vice President for Business



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Development for Panda Power Funds, the parent company of Mattawoman; Thomas W. Davis, Principal Engineer and Vice President of Environmental Consulting & Technology, Inc. ("ECT"); Paul Scheuren, Principal of Impact DataSource, LLC; Darren Stowe, Principal Planner and Environmental Consultant of ECT; David Hessler, Acoustic Engineer of Hessler Associates, Inc.; Lisa D. (Ricker) Walker, Staff Scientist and Senior Ecologist of ECT; and David Nelson, President of Street Traffic Studies, Ltd.

On January 15, 2014, supplemental direct testimony was filed by Mattawoman's witnesses Tessem, Walker, and Stowe. Additional supplemental testimony was filed, on June 30, 2014, by Mattawoman's witnesses Tessem and Walker along with a substitute ERD.

Mattawoman then made, on January 30, 2015, a third filing of supplemental direct testimony of its witnesses Tessem, Davis, Hessler, Walker, Stowe, and Nelson; Jennifer C. Leonard, a Registered Landscape Architect and Project Manager employed by Dewberry Consultants, LLC; and along with the panel testimony and supporting attachments of Vilma Brueggmeyer, a Senior Principal Engineer and former Vice President at Environmental & Technology, Inc.; Bradley Scott Pekas, Senior Professional Engineer at TriHydro; and Marianne Horinko, President of The Horinko Group. An errata to this testimony was filed on March 4, 2015, to correct mis-statements contained in that filing.

Mattawoman made a fourth filing of supplemental direct testimony of a panel of its witnesses, Walker and Leonard, on

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April 16, 2015. On the same date its witness Stowe filed a Substation Supplemental ERD.

On July 2, 2015, Mattawoman filed its June 2015 Ecological Survey and Comprehensive Project Impact Summary.

On July 10, 2015, Staff filed the direct testimony and exhibits of Ralph DeGeeter, the Commission's Generation and Transmission Engineer.

On July 10, 2015, PPRP filed the direct testimony of Frederick S. Kelly, Program Manager; William V. Paul, Chief of the Combustion and Metallurgical Division of the Air and Radiation Management Administration, Maryland Department of the Environment; Mark DiPrinzo, a partner and Senior Air Quality Professional at Environmental Resources Management, Inc. ("ERM"); Thomas S. Wickstrom, a Senior Air Quality Professional at ERM; John W. Grace, Chief of the Resources Protection and Appropriation Division of the Maryland Department of the Environment, Water Management Division; Robert W. Keating, a Geologist at ERM; Kristine B. Sillett, an Environmental Scientist and the National Environmental Policy Act Coordinator at Versar, Inc; Peter D. Hall, President of Metametrics, Inc.; and Diane Mountain, Senior Project Manager at ERM. It also filed its Initial Recommended Licensing Conditions.

Mattawoman then filed, on July 10, 2015, an Agreement of Stipulation and Settlement between Mattawoman and Joint Base Andrews. Then, on July 16, 2015, the State Agencies filed Revised Recommended Licensing Conditions, and, on August 20, 2015, PPRP filed the EPA Region Three's comments in review of the air condi-

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tions contained in the Initial Licensing Conditions and supporting documents for the CPCN, followed by its reply comments on September 16, 2015.

An extensive volume of public comments were also filed during the pendency of this case.

Legal Standards

This application has been filed pursuant to Sections 7-207 and 7-208 of the Public Utilities Article ("PUA"). Pursuant to Section 7-207(e) of the PUA, the Commission shall take action on an application for a CPCN only after due consideration of the following factors:

1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station or overhead transmission line is proposed to be located; and

(2) the effect of the generating station or overhead transmission line on:

(i) the stability and reliability of the electric system;

(ii) economics;

(iii) esthetics;

(iv) historic sites;

(v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;

(vi) when applicable, air and water pollution; and

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(vii) the availability and means for the required timely disposal of wastes produced by any generating station.

Under Section 7-208, the Commission shall include in the CPCN it issues the requirements of the federal and state environmental laws and standards that are identified by the Department of the Environment, and the methods and conditions that the Commission determines are appropriate to comply with those environmental laws and standards.¹

Public Comments

A large number of individuals and groups offered public comment in this case. Three evening hearings for public comment were held, two in Prince George's County and one in Charles County, where a portion of the gas pipeline is proposed to be located. The time period for public comment was extended on two occasions to allow for a complete opportunity to be available to those who wished to comment.

Public comment was voluminous and strident. Those who spoke in favor emphasized the economic benefits. They spoke of the construction and permanent jobs for local residents. These were stated to be well paying union jobs. Those same people spoke about the need for clean gas-generated electricity to replace the dirty coal production which is now in service. Those same people were

¹ In addition, the Commission may not adopt any method, or condition under these provisions that the Department of the Environment determines is inconsistent with federal and state environmental laws and standards. Section 7-208(f).

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confident that this plant would not damage the environment as it would meet all applicable standards. The local elected representatives were either in favor of or silent about this Project within this hearing process (with the exception of the State Senator for this district, who was opposed).

The vast majority of the speakers at the public comment hearings and of the written comments were opposed to the granting of a CPCN.

Those opposed were individuals and groups which mostly were concerned with the environmental harm that the plant would cause. These concerns covered the entire environmental spectrum. Issues were raised as to noise pollution; traffic congestion; water use; dewatering and the negative impacts on nearby streams; air pollution; viewsapes; gas issues, including fracking, pipeline safety, and gas quality safety; propane storage; injury to local flora and fauna; and social equity issues. The social issues raised stated that this geographic area was targeted due to its minority population and economic demographics, and the area is also being targeted and overburdened by the concentration of power plants within a small local area. This concentration of plants was stated to be intentionally discriminatory, and the cumulative effects of the cluster of power plants were not properly considered.

On September 17, 2015, a group of residents and organizations filed a petition to intervene in order to offer expert testimony on these issues, but the petition was denied due

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to its late filing and prejudicial impacts on the hearing process. The filings by that group were included in the record as public comment.

Discussion and Findings

This request for a CPCN is for the final form of the amended request filed by Mattawoman. The current form has been amended since its initial filing so that it meets and complies with the requests of the other parties and with all applicable laws and regulations.

The scope of a CPCN case, as with all proceedings before the Public Service Commission, are limited to those areas and powers assigned to it by the Legislature. Issues and matters that do not fall under those limits cannot be part of this case. As stated above in the "Legal Standards" section, which stated the legal considerations in a CPCN case, each area of consideration will be analyzed, based upon the evidence in this case, and a determination will be made as to whether the facts in the record comply with those legal requirements. If all the requirements are met that will allow the plant to operate in compliance with the law, and if it is in the public convenience and necessity, a CPCN will be granted. If the applicant fails to meet any of the requirements, the CPCN request will be denied.

A waiver of the two-year notice requirement was granted in this case, and the governing bodies of the two counties involved (Prince George's and Charles) did not choose to jointly sit with

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this Public Utility Law Judge at the public hearings that were held.

All of the parties filed extensive and greatly detailed expert testimony that addressed collectively all of the statutory requirements.

As noted above, a petition to intervene filed on October 16, 2013, by JBA was granted.

On July 10, 2015, an Agreement of Stipulation and Settlement ("Settlement") between Mattawoman and JBA was filed. The Settlement addressed the significant impacts that the Project has on the functions and facilities at JBA. No party objected to the Settlement which contained licensing conditions to be added as conditions to any CPCN to be granted.

On July 16, 2015, PPRP filed the final version of its Revised Recommended Licensing Conditions.

Staff also included in its testimony proposed licensing conditions that it wants incorporated into the CPCN, if it is granted.

Mattawoman has accepted all of the licensing conditions proposed by the parties in this case.

There were, however, no recommendations provided by the local or county governing units, so no consideration can be given to their wishes when deciding this case.

I find that several of the issues raised in the public comments need to be analyzed, even though they are not solely determinative of the final outcome of this case.

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

Some public comments alleged that notice to the citizens of Brandywine was ineffective as it was placed in newspapers, which are not read by the public. This may be true, but the notice requirements contained in the statute require notice in newspapers as a means to notify the public. This process depends on people reading newspapers, which may not be as effective a notice mechanism as it was in the past when newspapers were the main source of dissemination of information. While this is an issue that needs attention by the Legislature and the Commission, I find that Mattawoman met and exceeded the legal notice requirements for the issuance of a CPCN.

An allegation was made in public comments that the Brandywine area was targeted for new projects by power plant companies due to its racial and economic demographics. I find that there is no evidence of any improper motive or conduct by Mattawoman in its choice of a location for the Project. It is very hard to find locations in Maryland which have the infrastructure needed to support a power plant that does not have other areas of legal restrictions which makes those locations unsuitable. It is unfortunate for Brandywine that it is a suitable and legally available area for proposed power plant projects. If a proposed plant to be sited in Brandywine meets all legal requirements (at all governmental levels), the fact that other plants are located nearby is not a legal restriction to another one being built. This is true even though the negative impacts of a plant fall most severely

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

upon Brandywine while the benefits are distributed across a much larger geographic area.

Another allegation in the comments questioned the bias of the expert testimony. I find from my analysis of the expert testimony from Mattawoman that it clearly supports its position. This is to be expected as the applicant gets to choose its experts. The testimony from the Staff and PPRP does not suffer from this same orientation. I find that the testimony from the Staff and PPRP is not tainted with any bias, and I therefore give it the consideration appropriate for its weight and provativeness. The governmental structures in place are there to protect and serve the citizens of Maryland, and the professionals at PPRP and the Commission do not take lightly the burdens upon them or the trust placed upon them in the performance of their duties.

I find that the evidence proves that the Project will enhance the stability and reliability of the electric system. It will add needed capacity in a constrained area and will help speed up the decommissioning of older, dirtier, and less reliable generating stations.

I find that there are both short-term and long-term economic benefits to the Project. The short-term benefits are the construction jobs, construction materials bought, and the influx of workers shopping in the area during construction. The long-term benefits include the permanent jobs created, the local taxes paid, and the increased stability of reliable power to run the businesses and infrastructure of our modern technological society.

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I find that the site of the Project is zoned for industrial use by Prince George's County, and this Project is designed to have a small visual impact on the area and limited levels of noise addition to the environment. The aesthetic impacts are minor in nature as compared to other like-sized industrial facilities. I find that no historic sites are impacted by this Project, and all aviation safety issues are resolved.

The issues of air and water pollution are areas of concern to the public in Brandywine and its vicinity. I find that the licensing conditions which are to be made a part of any CPCN are very detailed and quite extensive in nature. These comprehensive conditions ensure that the Project can be constructed and function within all applicable air and water laws and regulations. If the state experts were not convinced that this was the case, they would have testified to that effect and would have opposed the Project's construction. I place my trust in their experience in this area to make my findings on this aspect of the analysis herein.

This same consideration applies to the question of disposal of waste produced by this Project and the water usage issues. I find that the licensing conditions and the design of the Project cover the legal requirements of these issues, and I find that these requirements are not a road block to the issuance of a CPCN.

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

This Project will also have a positive impact on the future needs for electric service in Maryland by adding capacity with the production of electricity within a constrained area.

I therefore find that the CPCN requested, inclusive of all of the licensing conditions proposed by the parties in this case and accepted by Mattawoman, is in the public convenience and necessity. The conditions included, which are attached hereto and made a part hereof, are those contained in the Settlement between Mattawoman and JBA; the proposed conditions contained in the testimony of Staff witness DeGeeter; and the Revised Recommended Licensing Conditions filed by PPRP.

IT IS, THEREFORE, this 13th day of October, in the year Two Thousand Fifteen,

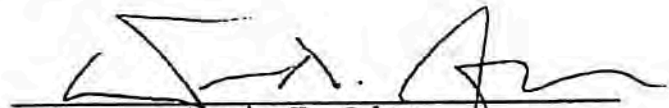
ORDERED: (1) That the application for a Certificate of Public Convenience and Necessity to construct a 990 MW generating facility in Prince George's County, Maryland is hereby granted to Mattawoman Energy, LLC in accordance with the findings and decisions rendered herein.

(2) That all of the proposed conditions of the parties accepted by Mattawoman Energy, LLC are incorporated herein and accepted as licensing conditions of the Certificate of Public Convenience and Necessity in accordance with the findings of this Proposed Order.

(3) This Proposed Order will become a final order of the Commission on November 13, 2015, unless before that date an appeal is noted with the Commission by any party to this

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

proceeding as provided in Section 3-113(d)(2) of the Public Utilities Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in Section 3-114(c)(2) of the Public Utilities Article.


Dennis H. Sober
Public Utility Law Judge
Public Service Commission of Maryland

November 13, 2015

In the matter of the application *
of Mattawoman Energy, LLC for a *
Certificate of Public Convenience *
and Necessity to construct a *
nominally rated 859 MW generating *
facility in Prince George's County, *
Maryland. *

Case No. 9330

To All Parties of Record:

The Proposed Order of Public Utility Law Judge filed in the above-entitled matter on October 13, 2015, was not appealed by any party, nor has the Commission modified or reversed the Proposed Order or initiated further proceedings into this matter. Therefore, today the Proposed Order became a final order of the Commission, and it was assigned Order No. 87243.

Very truly yours,

Leatrice Williams
Administrative Aide

lw

cc: Interested Persons



LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH

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401 WASHINGTON AVENUE
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March 11, 2016

Civil Clerk
Circuit Court for Baltimore City
Courthouse East
111 N. Calvert Street
Baltimore, Maryland 21202

**RE: *In the Matter of John T. Bradley, et al. FOR JUDICIAL
REVIEW OF THE DECISION OF: THE PUBLIC
SERVICE COMMISSION OF MARYLAND***
Case No.: 24-C-15-006839

Dear Clerk:

Enclosed is Amended Certificate of Service to Petitioners' Memorandum in Support of Petition for Judicial Review for filing in the above-captioned case.

Very truly yours,


David S. Lynch

DSL:ldr

Enclosure

cc: Joseph English, Esquire
Steven Talson, Assistant Attorney General
Robert T. Schaffer, III, Esquire
Kenneth G. Hurwitz, Esquire

PETITION OF:	*	IN THE
JOHN T. BRADLEY, et al.	*	CIRCUIT COURT
FOR JUDICIAL REVIEW	*	FOR
OF THE DECISION OF THE:	*	BALTIMORE CITY
PUBLIC SERVICE COMMISSION	*	
OF MARYLAND	*	
IN THE CASE OF:	*	Case No.:24-C-15-006830
IN THE MATTER OF THE	*	
APPLICATION OF MATTAWOMAN	*	
ENERGY, LLC FOR A CERTIFICATE	*	
OF PUBLIC CONVENIENCE AND	*	
NECESSITY TO CONSTRUCT A	*	
NOMINALLY RATED 859 MW	*	
GENERATING FACILITY IN PRINCE	*	
GEORGE'S COUNTY, MARYLAND	*	
PSC CASE NO. 9330; ORDER NO. 87234		

* * * * *

AMENDED CERTIFICATE OF SERVICE TO
PETITIONERS' MEMORANDUM IN
SUPPORT OF PETITION FOR JUDICIAL REVIEW

Citizen-Protestants filed their Petitioners' Memorandum in Support of Petition for Judicial Review on March 10, 2016. Their counsel inadvertently omitted counsel for Respondents Public Service Commission of Maryland, Mattawoman Energy, LLC, and Maryland Department of Natural Resources Power Plant Research Program from the Certificate of Service. Citizen-

Protestants, by their attorneys, G. Macy Nelson, David S. Lynch, and the Law Office of G. Macy Nelson, LLC, hereby file this Amended Certificate of Service:

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11th day of March, 2016 a copy of the foregoing Amended Certificate of Service to Petitioners' Memorandum in Support of Petition for Judicial Review and a copy of Petitioners' Memorandum in Support of Petition for Judicial Review was mailed first-class, postage pre-paid and sent via electronic mail to:

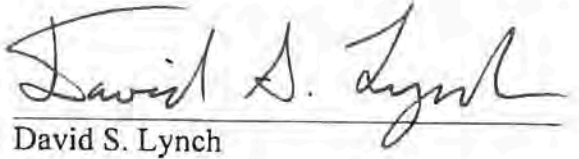
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Respectfully submitted,


David S. Lynch

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March 10, 2016

Hand-Delivered


Civil Clerk
Circuit Court for Baltimore City
Courthouse East
111 N. Calvert Street
Baltimore, Maryland 21202

**RE: *In the Matter of John T. Bradley, et al. FOR JUDICIAL
REVIEW OF THE DECISION OF: THE PUBLIC
SERVICE COMMISSION OF MARYLAND***
Case No.: 24-C-15-006839

Dear Clerk:

Enclosed is Petitioners' Memorandum in Support of Petition for Judicial Review for filing in the above-captioned case.

Very truly yours,


G. Macy Nelson

GMN:ldr
Enclosure

cc: Suede G. Kelly, Esquire
J. Porter Wiseman, Esquire
Kenneth G. Hurwitz, Esquire
Jennifer J. Grace, Esquire
Theresa V. Czarski, Esquire
Brent A. Bolea, Esquire
Sondra S. McLemore, Esquire
Frank W. Miller, Esquire
Michael L. Casillo, Esquire
Cara M. Johnson, Esquire

PETITION OF:	*	IN THE
JOHN T. BRADLEY, et al.	*	CIRCUIT COURT
FOR JUDICIAL REVIEW	*	FOR
OF THE DECISION OF THE:	*	BALTIMORE CITY
PUBLIC SERVICE COMMISSION	*	
OF MARYLAND	*	
IN THE CASE OF:	*	Case No.:24-C-15-006830
IN THE MATTER OF THE	*	
APPLICATION OF MATTAWOMAN	*	
ENERGY, LLC FOR A CERTIFICATE	*	
OF PUBLIC CONVENIENCE AND	*	
NECESSITY TO CONSTRUCT A	*	
NOMINALLY RATED 859 MW	*	
GENERATING FACILITY IN PRINCE	*	
GEORGE'S COUNTY, MARYLAND	*	
PSC CASE NO. 9330; ORDER NO. 87234		

* * * * *

PETITIONERS' MEMORANDUM IN
SUPPORT OF PETITION FOR JUDICIAL REVIEW

(b) 6 [REDACTED]

(b) 6 [REDACTED] Earthreports, Inc., Greater Baden Aquasco Citizens Association, and Mattawoman Watershed Society, Inc. (collectively, "Citizen-Protestants"), by their attorneys, G. Macy Nelson, David S. Lynch, and the Law Office of G. Macy Nelson, LLC, pursuant to

Maryland Rule 7-207, hereby submit this memorandum in support of their Petition for Judicial Review.

STATEMENT OF THE CASE

This case arises out of an approval by the Public Service Commission of Maryland ("Commission") of Mattawoman Energy, LLC's ("Mattawoman") request for the issuance of a Certificate of Public Convenience and Necessity ("CPCN") to allow it to construct a nominally rated 859 megawatt ("MW") combined-cycle combustion turbine electric generating facility in Brandywine, Prince George's County, Maryland. The Commission delegated Mattawoman's request to the Public Utility Law Judge Division to conduct the proceedings. Citizen-Protestants (b) 6 and Mattawoman Watershed Society were interested persons to the proceeding.

After a series of public hearings, the Public Utility Law Judge ("Law Judge") issued a Proposed Order of Public Utility Law Judge ("Proposed Order"), subject to certain conditions, approving Mattawoman's request for a CPCN. No party to the proceeding noted an appeal to the Commission and the Proposed Order became a Final Order of the Commission. Thereafter, Citizens petitioned for judicial review.

QUESTIONS PRESENTED

1. Whether the Commission's Order adequately articulates the basis of the Commission's decision at a level sufficient for judicial review of the legality of the decision.
2. Whether the Law Judge erred when he denied Citizen-Protestants' Joint Petition to Intervene?

SUMMARY OF THE LAW

Section 7-207 of the Maryland Code (1998, Repl. Vol. 2010), Public Utility Companies Article ("PUA") governs the Commission's review of an application for a CPCN. Section 7-207 provides, in pertinent part:

(e) The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

(1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located; and

(2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

(i) the stability and reliability of the electric system;

(ii) economics;

(iii) esthetics;

(iv) historic sites;

(v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;

(vi) when applicable, air and water pollution; and

(vii) the availability of means for the required timely disposal of wastes produced by any generating station.

Id.

PUA, section 3-106 governs intervention in Commission proceedings:

Application to intervene

(a) If a person timely files, the person may apply to intervene in a proceeding before the Commission.

Decision by Commission

(b) The Commission shall grant leave to intervene unless the Commission concludes that:

(1) the parties to the proceeding adequately represent the interest of the person seeking to intervene; or

(2) the issues that the person seeks to raise are irrelevant or immaterial.

Id.

STATEMENT OF FACTS

On July 19, 2013, Mattawoman filed an application with the Commission for a CPCN to construct a nominally rated 859 MW, natural gas-fired, electric power generating facility on approximately 88-acres of land located at 14175 Brandywine Road in the town of Brandywine, Prince George's County, Maryland

("Subject Property"). (Mattawoman Application, p. 4). The Subject Property is located 1.5 miles east of U.S. Highway 301 on Old Brandywine Road. *Id.* at 11. The proposed Mattawoman power plant would be one of four power plants that either exist or are proposed for the Brandywine area. (Transcript ("Tr"), July 21, 2015, pp. 112-13).

Following Mattawoman's application, the Commission assigned the case to the Public Utility Law Judge Division. Staff of the Public Service Commission ("Staff"), Maryland Office of People's Counsel ("OPC"), and the Maryland Department of Natural Resources, Power Plant Research Program ("PPRP") entered their appearances in the case. On November 13, 2013, the Law Judge granted a petition to intervene filed by the Joint Base Andrews, United States Air Force. (Proposed Order, p. 2).

Thereafter, Mattawoman filed its Environmental Review Document along with direct testimony on various issues related to its application. Staff and PPRP also filed direct testimony. On July 10, 2015, Mattawoman filed an Agreement of Stipulation and Settlement between Mattawoman and Joint Base Andrews. On July 16, 2015, the PPRP filed Revised Licensing Conditions. These conditions include, but are not limited to, regulations related to CPCN general requirements, air quality, construction dewatering, cooling water supply, terrestrial and aquatic ecology, noise levels, and traffic.

The Law Judge held a public comment hearing on July 21, 2015 at the Brandywine Volunteer Fire Department. At that hearing, numerous citizens and environmental organizations testified in opposition to Mattawoman's application for reasons related to traffic, environmental justice, general environmental harm, and air quality.

Citizen-Protestant (b) 6 opposed the Mattawoman application and testified about the impact of the proposed Mattawoman power plant on traffic in his community:

I enjoy shopping at a new shopping center in Brandywine. The Brandywine Crossing Shopping Center has a Target and a Safeway and a Costco. I need to plan my trip to get to that shopping center.

In fact, I can't drive to Waldorf any more, and my guess is that most people in this room, if they live in the area, also cannot get to Waldorf.

It's not the shopping center's fault, but the lights on Route 301 and the traffic is an absolute disaster. Absolute disaster.

(Applause)

So my point is that the Keys Power Plant is going to take several years to build. My guess is Mattawoman is going to take several years to build.

As I understand it, for the Mattawoman Plant there was some analysis to potentially put one little light in Brandywine right across from the antique store there, I forget the name of the road, Zoy (phonetic) Avenue, I forget. And that that was mixed.

I am fearful that there will be hundreds of construction vehicles for the Keys Energy Plant and hundreds of construction vehicles and cars of union jobs, et cetera, for the Mattawoman Plant on top of the hundreds of trucks dumping fly ash on the road to my house. That stinks.

I would love it if you guys at the Commission can re-evaluate the transportation and re-assess the value of traffic lights in this area that I don't have to cut through ever winding roads filled with potholes, that's another issue.

So I don't have to time getting to the shopping centers or even Brandywine itself. I now find myself shopping in Marlton or farther away places coming through neighborhoods.

Last point on transportation, this fire station is scheduled to move a little bit farther away, i.e., the high school. And I do believe that we will have a traffic disaster in Brandywine here with all the construction vehicles.

So not only am I concerned about my commute to work. I'm also concerned about the amount of time it's going to take for the fire engine trucks or ambulances, et cetera, to come from the high school on Brandywine Road and North Keys Road with all of this junk going around.

(Tr. July 21, 2015, pp. 75-77).

(b) 6 on behalf of Citizen-Protestant Patuxent Riverkeeper, opposed Mattawoman's application for a CPCN and testified about how the proposed Mattawoman power plant violated principles of environmental justice:

I think it's rather terrible that one could consider siting a power plant in a rural area without further addressing the questions of cumulative impact on the surrounding communities.

Whether it's the part of the process, or whether it's legally compulsory, or I would say certainly it's morally and ethically

compulsory to look at the full impact and not just those that are convenient or expedient.

You know, I'm very aware that it's not unusual for these sorts of cities to shift the burden on its citizens, but we have some obligation to disprove the feasibility of the applicant's plan. And it makes much more sense, right, if the applicant bears the burden to prove that feasibility and to prove those impacts are not onerous.

We know certainly statistically, EPA statistics in particular, as has been said earlier, there is an Environmental Justice trend nationally, not just in to put these onerous protests.

And when I talk about Environmental Justice, I realize most people immediately think of communities of color. But **we're also talking about have and have nots, as in those who have four power plants in their neighborhood and those do not.** There's a heck of a difference between those two extremes.

So there's no way factually, logically, or reasonably that you can suggest that the multiple industrial power facilities put in a relatively small portion, basically the same zip code in urbanizing counties. We'll at least have some change to the quality of life and the quality of the environment for people in those host communities.

The problem is, you know, the applicants obviously are representing investors and they look for affordable spaces and maybe they look for zoning or maybe they look for infrastructure hookups, but Environmental Justice is really not something that is typically compulsory in these processes.

In this case, you know, it's not a federal process. We understand that as well. It's a state process. And it is a troubled process that's one that actually does leave out certain areas of analysis.

Things that it just doesn't look at it doesn't make it germane, and that's again, very, very troublesome. Anyway, there's a lot

of momentum. You know this as well as I, behind these proposals.

It's like citizens who want to push back, find themselves as though they're standing in front of a speeding train trying to hold their hand up. And by the time the train runs over them, someone notices they were hit, is about the time someone wonders gee, I wonder what they were holding their hand up about.

So with that kind of momentum, it's a very lopsided process and obviously, if we're going to get any traction, the citizens who have our concerns considered, not just recorded, but actually reviewed and considered, then it will probably have to be in a much different form.

But anyway, you know, I've been coming to these things for some time, quite a long time, and watching folks officiate over processing. Although impartiality may be a liability, right. You really need advocacy on behalf of the quality of life of these citizens.

So I'm uncomfortable with the only forum being afforded us is one that is pre-determined generally to expedite or facilitate the approval of these applications. That's really tough. So in the simplest of terms, I'm asking you to look honestly and closely at whether we're creating a sacrifice zone here, not just with one unwanted facility, but multiple unwanted facilities.

I know you're supposed to look at them in isolation but it's really not sensible to look at these as discreetly separate applications when there's a cumulative effect. And I understand that there are people in the loop, there always are, who want these plants built regardless of the possible impacts, for any number of possible reasons.

But the citizens here have at least the equitable right to know precisely what those impacts are. That disclosure really hasn't been made.

What will be taken from us that can never be put back. What is being done here that cannot be mitigated, and how do these applications again, cumulatively affect our air, our water, and our environmental quality of life. Any process that can't find this question to be relevant to this process is probably a very broken one. But I'd love it if you'd prove me wrong. I encourage you to try and prove me wrong. Thank you.

Id. at 104-110 (emphasis supplied).

(b) 6 a former Senior Scientist with the United States Environmental Protection Agency's Office of Air Quality Planning and Standards, testified in opposition to Mattawoman's application. He testified that the cumulative impact of nitrogen emissions from the proposed Mattawoman power plant and other nearby power plants will dramatically impair the air quality and environment of the nearby residential communities and he advocated for the Commission to properly evaluate the significant air quality impacts:

...This community has raised innumerable questions and has not had a proper opportunity to get involved with expertise of its own.

Frankly, if you have to look at the Public Service Commission, it looks to most people like a rubber stamp agency. That must not be the case here. We're talking about a density of power plants in this area that is absolutely unprecedented.

We're talking about major emissions of oxides of nitrogen. **And let me add, that this county is part of a non-attainment region for ozone. The air quality is already unacceptable.** I'm sure that the Public Service Commission understands that. And it might think twice and thrice about locating four power plants in

this area, actually it's five. If we consider, no, I'll name them. Chalk Point is not immediately in this area, but it certainly affects the air quality. Then we have the North Keys Plant. Supposedly it's approved, although I understand there's a permit for the wetlands that needs, something has to happen with that.

Then we have the proposed Panda Mattawoman Plant right in this area. Then we have the North Keys Plant, less than a mile away from here. And over in Charles County we have the Charles Center, Charles County Energy Center.

* * *

So we have this cluster of power plants, some already pumping emissions into the air. Some under construction such as the one in Waldorf which is only 8 miles away from the Mattawoman Plant. And these plants are aligned. I have a map that I've given you which shows that these plants with the exception of Chalk Point, are aligned in a basically a south, southwest to north northeast transect.

What does that mean? It means that when the wind is from the south southwest, to south, to southwest, it comes to a greater or lesser extent and will overlap. In other words, you have the cumulative impact of all of these power plants affecting the air quality in the region.

Now I understand that some modeling has been done. Frankly, I have not had the time to examine those in detail but I can tell you that when it comes to air quality modeling, the devil is in the details, number one; and number two, I can tell you that the consulting firms that do that modeling know exactly where their bread is buttered.

And it's not from the community. They know where their bread is buttered and there's only one right answer to that modeling. That's why you need independent expertise.

And I can tell you that what I've seen so far is that these questions have not been examined to the extent that they need to be examined.

It's not enough, it's not enough to convince the Public Service Commission. You need to convince this community that we're breathing the air here. There's another issue that needs to be addressed.

These power plants leave what's called the rural tier of Prince George's County. That is supposed to be protected because of its tremendous natural resource potential. That's the watershed for the Chesapeake Bay. It's the watershed for the Patuxent River.

When you pump hundreds and hundreds of tons of oxides of nitrogen into the atmosphere, that forms nitrates. That is the positive in the Chesapeake Bay and in the watershed. It's one of the leading power plants, is one of the leading causes of nitrate deposition in the Chesapeake Bay.

* * *

I'll say a little bit more about ozone formation. This is a non-attainment area for ozone, meaning that the air quality here exceeds the national ambient air quality standards for ozone.

That means that the air is not healthy. When you pump in hundreds of tons of oxides of nitrogen, those are precursors for further chemical smog and for ground level ozone. We need to be as a non-attainment zone, reducing the emission of oxides of nitrogen, not increasing them.

Now there's another reason I think we need to delay. You said, and I'm not sure that EPA has yet made its comments on the analysis. I believe Region 3 will be reviewing it. They need an opportunity to look at that. So for all of these reasons, you need to extend the comment period. You need to extend the hearing committee.

This community as person after person has testified, has not had an adequate opportunity to weigh in on very complicated technical issues, on issues that will affect the quality of life and the public health of the people in this area.

So I hope you'll take my requests seriously. You need -- you clearly have not convinced the public here. You need to hold more hearings, more evidentiary hearings to address the many issues you've heard about tonight.

And I can tell you that if you approve that, the fifth power plant in this small area, you will be hearing about it for many years to come. Thank you.

Id. at 110-18 (emphasis supplied).

On August 21, 2015, a group of citizens, including Citizen-Protestants (b) 6, filed a Joint Petition to Intervene. Citizen-Protestant Mattawoman Watershed Society, Inc. was also a petitioner. The Joint Petition requested the right to submit written rebuttal expert testimony on the air quality and related environmental and social justice impacts. The Law Judge held a hearing on the Petition to Intervene and on September 25, 2015, issued a ruling denying the Petition to Intervene. The Law Judge wrote: "I find that the Joint Petition to Intervene of the Citizens is not timely, improper under the rules, contrary to the procedural schedule, and not in the best interest of the administration of justice. The Petition is therefore denied." (Law Judge Ruling, p. 5).

On October 13, 2015, the Law Judge issued a Proposed Order approving Mattawoman's application for a CPCN. Before addressing the PUA, section 7-207 criteria, the Law Judge dismissed the environmental and social justice concerns raised by citizens at the public hearing. He wrote:

An allegation was made in public comments that the Brandywine area was targeted for new projects by power plant companies due to its racial and economic demographics. I find that there is no evidence of any improper motive or conduct by Mattawoman in its choice of a location for the Project. It is very hard to find locations in Maryland which have the infrastructure needed to support a power plant that does not have other areas of legal restrictions which makes those locations unsuitable. It is unfortunate for Brandywine that it is a suitable and legally available area for proposed power plant projects. If a proposed plant to be sited in Brandywine meets all legal requirements (at all governmental levels), the fact that other plants are located nearby is not a legal restriction to another one being built. This is true even though the negative impacts of a plant fall most severely upon Brandywine while the benefits are distributed across a much larger geographic area.

(Proposed Order, p. 10).

With respect to the PUA, section 7-207(e)(2)(vi), the Law Judge wrote:

The issues of air and water pollution are areas of concern to the public in Brandywine and its vicinity. I find that the licensing conditions which are to be made part of any CPCN are very detailed and quite extensive in nature. These comprehensive conditions ensure that the Project can be constructed and function within all applicable air and water laws and regulations. **If the state experts were not convinced that this was the case, they would have testified to that effect and would have opposed the Project's construction. I place my trust in their experience in this area to make my findings on this aspect of the analysis herein.**

Law Judge Decision, p. 12 (emphasis supplied). Immediately following this finding, the Law Judge made the following finding regarding section 7-207(e)(2)(vi):

This same consideration applies to the question of disposal of waste produced by this Project and the water usage issues. I find that the licensing conditions and the design of the Project cover the legal requirements of these issues, and I find that these requirements are not a road block to the issuance of a CPCN.

(Proposed Order, p. 12).

No formal party to the proceeding noted an appeal to the Commission, and the Commission adopted the Law Judge's Proposed Order on November 13, 2015. Thereafter, pursuant to PUA, section 3-202(a), Citizen-Protestants noted a timely petition for judicial review.

STANDARD OF REVIEW

Section 3-203 of the PUA sets forth the standard for judicial review of a decision of the Commission:

Every final decision, order, or regulation of the Commission is prima facie correct and shall be affirmed unless clearly shown to be:

- (1) unconstitutional;
- (2) outside the statutory authority or jurisdiction of the Commission;
- (3) made on unlawful procedure;

- (4) arbitrary or capricious;
- (5) affected by other error of law; or
- (6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole.

Id.

A court reviews the Commission's decisions "as consistent with the standard of review applicable to all administrative agencies." *Columbia Gas of Md., Inc. v. Pub. Serv. Comm'n of Md.*, 224 Md. App. 575, 580 (2015) (citing *Office of People's Counsel v. Md. Pub. Serv. Comm'n*, 355 Md. 1, 15 (1999)). On judicial review, a court may generally not uphold a decision by an agency "unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Balt. Gas & Elect. Co. v. Pub. Serv. Comm'n*, 75 Md. App. 87, 97 (1988) (quoting *United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984)). The Commission's written findings "must at least be sufficiently detailed to apprise the parties as to the basis for the agency's decision." *Id.* at 97. "It is not enough for an agency to make only ultimate findings." *Id.* at 98 (quoting B. Schwartz, *Administrative Law*, § 140 (1976)); see also *Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 553 (1999) ("[f]indings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions."). "The

agency's decision must be precise and clear enough to allow for meaningful appellate review. If the agency fails to meet this basic requirement, the decision is considered arbitrary and the case must be remanded for the purpose of correcting the deficiency." *Mortimer v. Howard Research & Dev. Corp.*, 83 Md. App. 432, 441-42 (1990).

ARGUMENT

I. THE COMMISSION FAILED TO ADEQUATELY ARTICULATE THE BASIS OF ITS DECISION AT A LEVEL SUFFICIENT FOR JUDICIAL REVIEW OF THE LEGALITY OF ITS DECISION.

By statute, the Commission may only take final action on an application for a CPCN after consideration of specific impacts, including the effect of the proposed power generating station on: "air and water pollution" and "the availability of means for the required timely disposal of wastes produced by any generating station." PUA, § 7-207(e)(2)(vi) and (vii). In approving Mattawoman's application in this case, the Commission's decision was arbitrary and capricious because it failed to adequately articulate findings of fact regarding the effect of the generating station on air and water pollution and the availability of timely disposal of waste generated by the proposed generating station.

Maryland's jurisprudence on the question of what constitutes adequate articulation of findings of fact in an agency decision is well established. An agency's "[f]indings of fact must be meaningful and cannot simply repeat

statutory criteria, broad conclusory statements, or boilerplate resolutions.” *Bucktail v. Talbot County*, 352 Md. 530, 553 (1999). The basis of the decision must appear within the four corners of the decision. *Mortimer*, 83 Md. App. at 446 (declining to speculate on which facts in the record the planning board might have adopted). Maryland’s jurisprudence prohibits a reviewing court from searching the record to find evidence to support an agency action. *See, e.g., United Steelworkers of Am. v. Bethlehem Steel Corp.*, 298 Md. 665, 679-80 (1984). *Cf. E. Outdoor Adver. Co. v. Mayor of Baltimore*, 128 Md. App. 494, 517-18 (1999) (stating that courts reviewing agency records may not “read the record ...[and] guess at the conclusions drawn.”) (emphasis in original).

In this case, the Law Judge did not adhere to these principles when he recommended approval of Mattawoman’s CPCN application. With respect to air and water pollution, he found:

The issues of air and water pollution are areas of concern to the public in Brandywine and its vicinity. I find that the licensing conditions which are to be made part of any CPCN are very detailed and quite extensive in nature. These comprehensive conditions ensure that the Project can be constructed and function within all applicable air and water laws and regulations. **If the state experts were not convinced that this was the case, they would have testified to that effect and would have opposed the Project’s construction. I place my trust in their experience in this area to make my findings on this aspect of the analysis herein.**

(Proposed Order, p. 12) (emphasis supplied). He then wrote:

This same consideration applies to the question of disposal of waste produced by this Project and the water usage issues. I find that the licensing conditions and the design of the Project cover the legal requirements of these issues, and I find that these requirements are not a road block to the issuance of a CPCN.

Id. From the four corners of the Law Judge decision, which was adopted by the Commission, it is impossible to determine the basis of the decision on air quality and waste disposal. From the Proposed Order, this Court can only conclude that the Commission based its approval of the CPCN on lack of expert testimony from the State opposing the construction of Mattawoman's proposed power plant. Nowhere does the Law Judge articulate what record evidence he relies upon to make his decision regarding air quality and water quality. The Law Judge made no independent factual finding regarding air and water pollution. Rather, he rejected the public's well-reasoned objections based on air quality on the grounds that if they had had merit the State would have sided with the public. This finding is not meaningful. It requires this Court to guess at the conclusions drawn. This Court should vacate the Law Judge's decision because the Law Judge did not articulate what the Law Judge decided and why.

Moreover, even if this Court interprets the Law Judge's reference to the licensing conditions and lack of testimony from "State experts" as the basis of the Law Judge's decision regarding air quality and waste disposal, the Law Judge failed to adopt those conditions and testimony as part of his decision. In an

administrative zoning appeal, the Court of Special Appeals has instructed that “there is nothing inherently improper if the decision that the Council adopted, i.e., the ZHE’s decision, in turn adopts and incorporates reports and recommendations of other public offices – so long as the adopted findings and conclusions within each of those reports are sufficiently articulated, clear, and specific.” *Colao v. County Council of Prince George’s County*, 109 Md. App. 431, 460-61 (1996); see also *Md.-Nat’l Capital Park & Planning Comm’n v. Greater Baden-Aquasco Citizens Assoc.*, 412 Md. 73, 82 n.9 (2009) (“We note that the Planning Board did not simply incorporate by reference the Technical Staff’s Report. It included large portions of the report in the Resolution and added additional findings of fact and conclusions. The Board’s adoption of a substantial portion of a Staff Report does not give rise, in and of its mere adoption, to an adverse inference that the Board abdicated its task to exercise independent judgment.). Here, unlike the administrative decision maker in *Greater Baden-Aquasco*, the Law Judge never adopted the licensing conditions or any other record evidence as part of his findings on the issues of air quality and waste disposal. Indeed, he did not adopt any report or recommendation from any party to the case on the issue of air quality and waste disposal. It is irrelevant whether the licensing conditions contain sufficiently articulated, clear, and specific findings and conclusions regarding air quality and waste disposal (Citizen-Protestants maintain they do not), because the

Law Judge failed to adopt, incorporate by reference, or even reproduce those elements of the record. The Court is bound by the four corners of the decision, and nowhere in the Proposed Order does the Law Judge articulate or give meaningful consideration to the issues of air quality and waste disposal, consideration of which is statutorily mandated.

For these reasons, the Commission's decision, which adopted the Law Judge's Proposed Order, does not articulate clear and specific findings such that it allows this Court to engage in a meaningful review. Citizen-Protestants respectfully urge this Court to remand this case to the Commission for a decision consistent with this Court's Order.

II. THE LAW JUDGE ERRED WHEN HE DENIED CITIZEN-PROTESTANTS PETITION TO INTERVENE.

In *Clipper Windpower v. Sprenger*, 399 Md. 539, 562 (2007), the Court of Appeals explained that a petition to intervene in a Commission proceeding under PUA, section 3-106 would be timely if filed "prior to the close of the proceedings." Here, Citizen-Protestants moved to intervene on August 21, 2015, well before the close of the proceedings. PUA, section 3-106 requires the Commission to allow the applicant to intervene, "unless the Commission concludes that: (1) the parties to the proceeding adequately represent the interest of the person seeking to intervene; or (2) the issues that the person seeks to raise are irrelevant or immaterial." *Id.*, § 3-106(b). Here, the Law Judge found that:

“Citizens raised several areas of concern....All of these issues could have been addressed during the hearing process. Testimony, cross-examination, and evidence could have been presented, **the results of which may have had an impact on the final result of the hearing process.**” (Law Judge Decision, p. 4) (emphasis supplied). If the Law Judge found that the concerns raised by the Citizen-Protestants may have had an impact on the final result of the hearing process, then there can be no question that Citizens met the test set forth in PUA, 3-106(b). The issues Citizen-Protestants sought to raise were not immaterial. Citizen-Protestants satisfied the requirements of PUA, 3-106, and filed a timely Petition to Intervene prior to the conclusion of the case. The Law Judge erred when he denied Citizen-Protestants an opportunity to intervene and introduce expert testimony regarding environmental and social justice concerns, “which may have had an impact on the final result” of the case. For these reasons, Citizen-Protestants respectfully request that this Court reverse the Law Judge’s decision, remand this case to the Commission, and allow Citizen-Protestants to intervene.

CONCLUSION

For all of the reasons stated above, Citizen-Protestants respectfully urge this Court to remand this case to the Commission.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 10th day of March, 2016 a copy of the foregoing Petitioners' Memorandum in Support of Petition for Judicial Review was mailed first-class, postage pre-paid to:

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Attachment 2

August 17, 2015 Citizens' Joint Petition to Intervene

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

**IN THE MATTER OF: APPLICATION OF
MATTAWOMAN ENERGY LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT A NOMINAL
859 MW GENERATING FACILITY IN PRINCE
GEORGE'S COUNTY, MARYLAND**

**CASE
NO. 9330**

CITIZENS' JOINT PETITION TO INTERVENE

1. Pursuant to Section 3-106 of the Public Utilities Article of the Annotated Code of Maryland ("PUA") the Petitioners identified below respectfully move to intervene in the above-captioned proceeding before the Maryland Public Service Commission ("MPSC") and related entities.

2. The Petitioners (hereafter "Citizens") are an environmental non-profit corporation and 15 residents of Prince George's County and three residents of Charles County, Maryland who reside in Brandywine and adjacent communities that will be directly and adversely impacted by the construction and operation of the proposed Mattawoman Energy generating plant and its associated off-site infrastructure, as follows:

(a) The Mattawoman Watershed Society, Inc. ("MWS"), P.O. Box 201, Bryans Road MD 20616, works to preserve, protect, and restore Mattawoman Creek. The MWS uses the Mattawoman for recreational, educational, and scientific purposes, and for engaging the public to support the Creek and to support MWS. MWS is concerned with direct, secondary, and cumulative impacts of the Mattawoman Energy proposal to the watershed, the

Mattawoman main stem, tributaries, and wetlands. Among MWS activities that have occurred downstream of the subject project are ichthyoplankton surveys of anadromous-fish usage of the nontidal Creek, benthic macro-invertebrate surveys carried out under the Maryland Stream Waders program, a freshwater mussel survey, studies of water quality, and assistance to groups conducting field trips on and near the Creek. MWS has members who live within a five mile radius of Mattawoman Energy, and a member who owns land adjacent to Mattawoman Creek. Individual petitioners (b) 6 and (b) 6 are MWS members.

(b) (b) 6 is a taxpayer and life-long resident of Prince George's County. Her two personal concerns are that her heart condition could worsen if the applicant purchases pollution offsets in lieu of full control of unhealthy air on-site, and that the value of her homestead will decline if the proposed generating plant is constructed in her rural neighborhood.

(c) (b) 6 has concerns about the adverse effects to the environment that have not been adequately addressed by existing parties. The inherent accidental leakage of gas in the pipelines transporting such gas and its processing are recognized as a more potent source of ozone creation and global warming than coal itself. Unlike the Charles Energy Center, the subject Mattawoman plant (like the nearby Keys plant) will have no requirement to provide local energy within the county but will be free to pump in natural gas, often acquired from fracking processes, and to sell electricity on the open market. (b) 6 resides between the proposed Keys energy plant, the adjacent NRG fly ash dump site (a dump facility for the solid waste residue from NRG's Chalk Point coal plant) and the proposed Mattawoman energy plant. The facilities will be operating among residential housing, schools, and churches in Brandywine. The Mattawoman site would be 1584 feet from Brandywine

Elementary School, and 2 miles from both Gwynn Park Middle School and Gwynn Park High School in Brandywine. The Mattaponi Elementary, Baden Elementary, and Frederick Douglas High schools are also close by - just a few miles further. The children in the Brandywine, Baden, North Keys and Croom communities will be exposed to a concentration of these plants emitting methane and other ozone harming pollutants.

(d) (b) 6

(b) 6 is a licensed landscape architect. She believes that the record has not shown that the clustering of power plants and related fossil fuel disposal sites in the rural tier of southern Prince George's County will not constitute another threat to long-compromised air and water quality in Prince Georges' County's Rural Tier, the Patuxent River, and Chesapeake Bay. Corson supports the efforts of our neighbor (b) 6 to present expert testimony on the flaws in the scientific assessments by existing parties. It is terribly unfair that our lightly populated area is unable to rely on the government to properly perform such analyses on behalf of the citizens.

(e) (b) 6 lives on a

farm located five miles from the proposed Mattawoman site and will be adversely affected by having to use rural roads damaged by heavy trucks accessing the site, as well as aesthetic damages from the huge plant buildings that damage residential property values. The clustering of existing power plant facilities, including ash dumps, as well as sand and gravel mining, have caused problems with well water and the new plant will worsen the situation.

(b) 6 and several of her grandchildren have developed allergies that are linked to the worsening air quality in the southern county area.

(f) (b) 6

(b) 6 are residents of the Brandywine area since 1988. They use their property for sustainable agricultural and are active in local preservation and land trust

organizations that fight to protect the unique and fragile wetlands along the southern Prince George's and Charles County line in the Brandywine, Baden and Aquasco communities. Their sustainable agricultural business and wetlands protection work is threatened by multiple aspects of the proposed application 9330. First, notice to the public and chance for meaningful input even for longtime civic activists like (b) 6 has been grossly inadequate. Second, no local energy needs have been substantiated. Of particular concern is the failure by the PSC to consider renewable energy options in the needs assessment. Third, the routing of the proposed natural gas pipelines will disturb and threaten the core mission and associational interests of the protection of wetlands by the Black Water Land Trust, of which Joanne has been a leading member. The permanent and temporary impacts threaten to damage a pristine part of Zekiah and Jordan Swamps and Cedarville State Forest. Direct impacts likely include 40 acres of forest, six acres of forested wetlands, four acres of emergent wetlands, and stream habitat. Forested wetlands, forested uplands, Wetlands of Special State Concern, forested streams, and meadows will be disturbed, diminished and destroyed. These large, unbroken forests are critical as nesting areas for at least 24 forest interior dwelling species of birds. Fourth, the cumulative effects of clustering existing power plants together with proposed power plants have not been adequately assessed. The proposed power plant clustering will industrialize the agricultural and natural resources of the greater Brandywine area, where significant investment in historic, sustainable agriculture and natural resource preservation and protection has already been made, and will thus conflict with and harm other state and county approved development programs including the Rural Legacy Program, the community's Priority Preservation Area designation, the Historic Resource Preservation Program, the Maryland Agricultural Land Preservation Foundation programs, the Prince George's County Planning Board plan for Revitalization of Brandywine, and other sustainable development plans. Clustering will have particularly

harmful effects on local transportation infrastructure that has not been comprehensively assessed. Almost all major intersections leading to the proposed site have unacceptable traffic level of service rating and it is uncontested that approval of the application will worsen the existing terrible traffic congestion in the Brandywine area. Approval of the application will cause this untenable traffic situation to widen into the vulnerable rural road network in the Aquasco, Baden and Croom areas, which are being used as a by-pass route around Brandywine.

(g) (b) 6 is a senior citizen aged 73 whose health will be harmed by the cumulative effect of the emissions of three power plants within an approximately three-mile radius. These emissions include the ingredients for ozone (nitrogen oxides (NOx) and volatile organic compounds (VOCs), greenhouse gases (carbon dioxide and equivalents), methane, and other unhealthy pollutants. These dangerous emissions will drift due to prevailing winds to her neighborhood approximately 7 miles northwest of the proposed Mattawoman Energy power plant. The emissions from these plants will cause health problems such as asthma, COPD, and heart disease. Forsht-Tucker is very distressed at the environmental injustice of a state agency dumping multiple polluting plants in her minority-majority community with many low-income residents. The Mattawoman plant will be located adjacent to the Joint Base Andrews (JBA) Defense Reutilization Management Office (DRMO) superfund site and the disturbances to both sites risks the introduction of additional toxic substances into the local air. The effect will be disproportionately on racial minority and poor Maryland residents.

(h) (b) 6 and his family and neighbors will be adversely affected by multiple factors that have not been adequately investigated in the PSC 9330 case: First, they received no public notification of plans to build this power plant before recently learning of the application

third-hand from local civic groups, after the parties had already submitted testimony. Second, the application process has been unjust and racist because many community residents are poor and a large percentage are African American. The PSC has listened only to corporations that have targeted Brandywine and the rural tier of the southern County as an environmental sacrifice zone for their own profit making. Third, the addition of another power plant will result in a substantial decrease in residential and small agricultural property values that are the predominant local land use and thus damage the already fragile local economy. Fourth, the conduct of the application process appears to be calculated to circumvent proposed federal regulations that will restrict or disallow the development of this plant and similar ones.

(i) (b) 6 will be harmed by the negative effects of the plant construction and operation on the Mattawoman Creek.

The proposed Mattawoman Energy Plant has been evaluated by the Maryland Department of Natural Resources (DNR) to have multiple detrimental effects to the Mattawoman Creek, a critical watershed once considered by DNR to be the "best, most productive, tributary of the Chesapeake Bay," but now reported by an interagency task force consisting of DNR, US Fish and Wildlife, the Army Corps of Engineers, and others as being "at the tipping point for irreversible degradation." (b) 6 and his family will be harmed by the damage that operation of the plant is likely to inflict on the economic development plan for his home town of Indian Head. The town is dependent on attracting people to use the Rail Trail and the Creek. Consultants for the town have identified degradation of the Mattawoman Creek watershed as a major threat to those economic development plans. Charles County derived \$41 million in 2007 from fisherman using Mattawoman Creek and that amount has risen in the years since. It is probable that the power plant will cause a net loss of tax revenue in Charles County and result in increased local taxes. Finally the aesthetic and personal

enjoyment derived by (b) 6 and his family will be harmed by the irreversible degradation of the Creek that is likely to follow from approval of application 9330.

(j)

(b) 6 in Prince George's County, Maryland for 43 years. Her residence is four miles from the proposed Mattawoman Energy, LLC power plant in Brandywine, as well as two miles from Panda Brandywine and five miles from Keys Energy, or directly surrounded by the proposed power plant cluster. (b) 6 will be directly harmed by the airborne emissions from these power plants. Southern Prince George's County has been listed by the EPA and the Metropolitan Area Council of Governments as a non-attainment area for ozone for decades because it is impossible to clean our air. The emissions from the proposed Mattawoman Energy plant, when added to the emissions from the Keys, Panda, and St. Charles Energy Centers, and from the surrounding coal-burning power plants at Chalk Point, Naval Surface Warfare Center Indian Head, Morgantown, and Possum Point, will make it impossible to remove the greater Brandywine community from listing as a non-attainment area for ozone. Those with asthma and other respiratory health problems have been forced to endure this dirty air since the coal-fired power plants were built. No regulations have been strict enough to prevent air polluting emissions from power plants. (b) 6 will be harmed if intervention is not granted because no other party has admitted that only full capture of poisonous emissions will clean the air. Full capture of carbon dioxide is critical to reduce ozone, greenhouse gas, climate warming, and related impacts. With full capture, the other regulated pollutants will be removed from the atmosphere. These regulated poisons are NO₂, VOC's, SO₂, H₂SO₄, PM₁₀ and PM_{2.5} (soot). The applicant has not been required to install full capture systems for all air pollutants emitted from their plant and thus the environmental harms have not been fully considered by the PSC. (b) 6 works to protect birds and other wildlife as a member of the

National Audubon Society and the Southern Maryland Audubon Society and as an individual. Loss of habitat is the greatest threat to wildlife, especially migratory birds that need specific habitats for nesting. The gas pipelines must be re-routed to another location. The gas pipeline, as planned to run through forests, (b) 6 and Cedarville State Park, will undo four decades of (b) 6 personal hard work in environmental organizations as a naturalist and environmental educator to protect these habitats and teach others to protect them. Finally, (b) 6 has not found any public notices of public hearings on the CPCN application of Mattawoman in the local community media. PSC ordered them to place hearing notices in newspapers of general circulation for each of four weeks prior to the hearings. She reads the local press regularly but has never seen these notices, or any statements by the applicant of where and when notices were published.

(k) (b) 6 seeks to oppose the application because the PSC has failed to adequately investigate real alternative conditions for approval that will actually protect the environment from the cumulative effects of the developing power plant cluster.

(l) (b) 6 is a resident of the Rural Tier and member of the Friends of Croom Civic Association. Merlino seeks to intervene to oppose the application because it is incompatible with and will harm her personal and associational interests in preserving the rural environment, quality of life, and sustainability of rural land values in the local area.

(m) (b) 6 live less than five miles from the proposed plant site. They seek to intervene to oppose application 9330 because of the failure of the PSC or the existing parties to consider the following problems. First, (b) 6 suffers from heart

disease. The failure by the PSC to abate the toxic air conditions onsite could aggravate her condition, ruin their quality of life, and oblige them to incur significant additional long term health care costs. The (b) 6 will be unable to afford to move to a more affluent area of Maryland to safeguard (b) 6 health after the value of the (b) 6 residence will be harmed by construction of the proposed plant, as a single facility and as a component of the cluster of power plants planned for the Brandywine community. Local rural property owners were already hard-hit by the massive local property declines since they constructed their home in 2007. Prince George's County is already socio-economically and environmentally disadvantaged as compared to surrounding jurisdictions in the metro Washington region. Construction of the power plant will make it unlikely that they can recover the investment they have made in their home in their lifetimes. Second, the power plant will house Chemicals of Interest as defined by the U.S. Department of Homeland Security. These will include toxic, flammable, and explosive chemicals. The trains using the adjacent CSX rail road track will also transport dangerous chemicals. The PSC has failed to adequately examine the vulnerability of the site to a catastrophic event such as a derailment, natural disaster, terrorist act, or accident. The PSC process has bypassed the normal disaster planning at the county level.

(n) (b) 6 manages her family farm located at (b) 6

(b) 6 This working family farm has been in the family for several generations. (b) 6 is a member of the steering committee of the Friends of Croom Civic Association, an unincorporated civic association registered with the Prince George's County Planning Board. The association consists of approximately 190 households and its organization purpose is preserving the rural character of the Prince George's County rural tier and the quality of rural life in its neighborhoods and communities. The farm and its environmental setting are now facing adverse consequences from the approval for adding two

more fossil fuel generating plants and their extensive infrastructure, the North Keys Power Plant and the Panda-Mattawoman Power Plant, to the existing cluster of energy facilities and energy-related waste facilities in the Brandywine community. Neither the (b) 6 family, nor its neighbors, nor the civic association which (b) 6 helps to lead received written or electronic notice of application 9330 until testimony from the parties had already been received. The degradation of air quality and the industrialization of the rural area of southern Prince George's County are contrary to state and local policies of maintaining rural character and the viability of agricultural enterprise. The reported pollution offsets that the applicant will purchase will not abate the harm her and her family will suffer. The application has completely failed to take these factors into consideration. The harm caused by these factors will be irreversible for the (b) 6 farm and local sustainable agriculture in general.

(o) (b) 6 operates a local farm-to-table cooperative serving residents of Brandywine, Croom and Upper Marlboro. The cooperative also helps support the Baden Food Bank, run by Community Support Services, the local charitable social services organization by whom (b) 6 is employed. (b) 6 thus has direct knowledge of the scope of sustainable agriculture in the Brandywine community as well as the extent and needs of the low-income community, which often relies on the Food Bank. (b) 6 is an asthmatic, and is directly affected on days when the local air quality deteriorates. (b) 6 can attest that the agency's predominately minority and low-income clientele, many of whom are also elderly, are fearful of the risks to their health and to the value of their small rural properties and residences. (b) 6 (b) 6 has observed that this particularly vulnerable population has had virtually no communication from state or county agencies or the applicant. It is her informed opinion that her neighbors and clients are again being targeted as a state-approved "sacrifice zone" for industrial power generation and related waste disposal because of their ethnic and

socioeconomic status. For example, the PSC has failed to complete or consider any independent environment assessment of the net impact of five fossil fuel power plants operating within 15 miles of the Brandywine community. The benefits of the power produced will not occur in the community, but instead will occur in wealthier, less diverse jurisdictions in the state that do not want dirty power plants in their own upscale communities.

(p) (b) 6 is a long-time resident of southern Prince George's county. She has been planning the purchase of a residence in Brandywine because of that community's predominant rural character and quality of life. The approval of two more power plants and related off-site infrastructure has forced (b) 6 to delay a move to her rural dream home because of the likelihood that the PSC will force Brandywine to become a pollution-generating sacrifice zone, despite the extensive planning activities of county and state agencies other than the PSC which would protect its rural character and on which she has relied in realizing her future move. The threatened proximity of these facilities has made the property values of local small properties uncertain, and (b) 6 will consequently face increased costs to finance her planned new residence in the community.

(q) (b) 6 (b) 6 in Charles County for 15 years and intend to remain in their home throughout their retirement years in the future. Their home is two miles south of the existing Panda Brandywine gas-fired plant on Cedarville Road. Three other generating plants have either been approved or are in the process of acquiring approval to be constructed: the St. Charles Energy Center on Billingsley Road five miles south; the Keys Energy Center on North Keys Road six miles northeast; and the Mattawoman Energy Center, which if approved, would be built about four miles north of the Sweet family home. When the radius of this six-mile area is widened to 15 miles, it brings in a fifth plant, the Chalk Point Energy

Station, which burns both gas and coal. The Sweets have been harmed by the failure of the PSC to require, or the applicant or any other neutral party to produce evidence in the record as to the combined impacts on air quality of no less than five fossil-fuel burning plants for our communities living within this 15 mile radius.

3. On July 7, 2013, Mattowoman Energy LLC filed with the MPSC an Application for a Certificate of Public Convenience and Necessity to Construct a Nominally Rated 859 MW Combine-Cycle Combustion Turbine/Heat Recovery Steam Generator Electric Generating Facility in Prince George's County, Maryland, including associated pipelines, roads and utility lines, in the unincorporated community of Brandywine, Maryland, 20613 in Prince George's County, PSC No. 9330, Docket #1.
4. On July 7, 2013 the MPSC docketed the application and referred the matter to the Public Utility Law Judges Division to conduct proceedings. Docket #2.
5. On May 28, 2014, the PUALJ issued a notice of amended schedule, at the request *inter alia* of the Applicant, moving the proposed date of final order to March 16, 2015 Docket #41.
6. On October 29, 2014, the PUALJ issued a second notice of amended schedule, granting the motion of the Applicant, Docket # 51, moving the proposed date of final order to July 22, 2015, at the convenience of the Applicant, to enable the Applicant to avoid the necessity of obtaining a second CPNC for associated high-voltage power lines connecting the proposed facility with the PJM. Docket #51.
7. On November 6, 2014, the PUALJ reminded the Applicant of its duty of public notice pursuant to Md. Code P.U. Art. §7-208(e). Docket #54.
8. On July 16, 2015 the Maryland Department of Natural Resources Power Plant Research Program committee (PPRP) issued its final recommended CPCN conditions, without public notice, that are highly adverse to the Citizens, including allowing the

Applicant to purchase offsets in lieu of mitigating the facility's emission of noxious oxides and volatile organic compounds into the five-plant sacrifice zone under development by the MPSC, despite the regional non-attainment status for these harmful emissions. Docket # 85.

9. On July 21, 2015 the PUALJ held a public comment hearing at the fire hall in Brandywine, MD 20613. No state agency, including the PSC, presented any information regarding the evidentiary hearing to the public, with a highly adverse impact on the Citizens ability to comment on relevant aspects of the subject application. More than three dozen persons, including the Citizens, stated that they opposed various aspects of the application but had not received notice of the July 21, 2015 evidentiary hearing, or of the public hearing session on the same evening, from the Applicant or any other Party or elected representative, but instead had learned of the hearing last-minute from other citizens and local residents.

10. At the public comment session, (b) 6 a professional environmental air quality expert, local resident, and member of the local Friends of Croom Civic Association, stated that he was prepared to submit expert testimony on the cumulative adverse effects of a cluster of five fossil fuel-powered generating plants in the process of approval by the MPSC in the vicinity of Brandywine. (b) 6 submitted a prospectus of his proposed expert testimony, and requested that the MPSC delay its August 17, 2015 air quality public comment hearing to allow for preparation of rebuttal testimony on air quality on behalf of the Citizens. (b) 6 characterized the developing cluster of power plants as an environmental "sacrifice zone" for the State of Maryland.

11. At the public comment hearing on July 21, 2015, several members of the stated that neither the MPSC nor any other party had addressed in the record the adverse disparate impact on persons of color and low-income residents from the developing power generation "sacrifice zone" in Brandywine and adjoining rural communities of southern Prince George's and Charles County.

12. At the public comment hearing on July 21, 2015, several members of the community stated that the MPSC had failed to take into consideration that neither the MPSC nor any other party had addressed in the record the adverse economic impacts of the proposed facility on local residential property values, despite the historic example of the adverse effects of the licensing and operation of the Panda-Mattowoman generating plant in neighboring Cedarville, Maryland.

13. Section 106 of the Maryland Public Code Art. §3-106, provides that an entity shall be granted leave to intervene if no other party can adequately represent its interests, and the issues sought to be raised are relevant and material.

14. Section 7-207(e) further requires that the MPSC consider the effect of the proposed facility on, *inter alia*, the economics, aesthetics, air and water pollution, and waste disposal of a proposed generating station. Since those impacts are predominately local, failure to affirmatively solicit, identify and respond to the concerns of the Citizens would facially violate this basic standard for issuance of a CPCN.

15. Each of the Citizens has a justiciable interest that may be adversely affected by the outcome of this proceeding. Those interests are shared in common without conflict among the MWS non-profit corporation and the 18 named individual petitioners, who may be deemed to be a joint petitioner by the PSC.

16. No other party to the application has or will make the claim that it will or can in fact adequately represent the interests of the Citizens.

(a) The Prince George's County Council is only interested in obtaining tax revenues from the proposed project and has not concerned itself about adverse impacts of the facility on property values or the health and welfare of the Citizens. No elected official of Prince George's County or other official of the State of Maryland has offered or agreed to contest the project on behalf of the Citizens or to represent their interests before the MPSC.

None of the local or state agencies or members of the General Assembly identified in §7-208(e) contacted the Citizens to inform them of the filing and review of the subject application prior to the evidentiary hearings, or have made any public announcement that they had received the mandatory notices themselves.

(b) The People's Counsel of Maryland represents the people of the state of Maryland at large and cannot represent the Citizens individually or as a coalition in opposition to the application. The People's Counsel upon information and belief has not communicated with the Citizens or any other local registered voters in the affected communities.

(c) The Citizens have found nothing in the record to indicate that the Maryland Department of Natural Resources or its Power Plant Research Program committee (PPRP) are even aware that the Citizens exist or have justiciable concerns.

(d) Intervenor Joint Base Andrews only cares about impediments to operating military aircraft in the airspace over the local communities in which Citizens reside and work. These military operations are largely exempt from compliance with the environmental controls relied on by the Citizens to protect their health, welfare and safety.

17. The Applicant has continuously modified its application for a CPNC over the past two years, with major modifications at a late date in the process, on January 30, 2015 and April 16, 2015. See Docket # 85, Revised Recommended Licensing Conditions, at 1. The Applicant still must submit, *inter alia*, responses to data requests filed by the PPRP as part of its Environmental Review Document. The Applicant is represented by Kenneth G. Hurwitz, Esq. who is upon information and belief a former Public Service Commission Executive Secretary. As such, Applicant has the most expert representation that literally, money can buy. The Applicant cannot be deemed to be prejudiced by the additional time as reasonably necessary for the Citizens to submit their evidence, as the Applicant has continued to modify

its Application and to negotiate conditions of the with State agencies, and given its high level of procedural expertise and experience, it would create an appearance of improper special access if the PUALJ were to find that the Applicant was not the party primarily responsible for the various failures of notice to the Citizens.

18. Many of the Citizens did register as interested persons in an attempt to present their concerns to the Commission about this Application. They include (b) 6 Docket #56 and 68 (second attempt); (b) 6 Docket # 58; and the Mattowoman Watershed Society, Docket #63. Despite registration as interested persons, the Citizens have never received copies of essential testimony and evidence for the Application, or even notice that such evidence might be available for their review, from the MPSC or the Applicant.

19. The Citizens seek to intervene to submit written expert rebuttal testimony on the air quality and related environmental impacts, a written memorandum of law and fact on the project's disparate and adverse impacts on minorities and low-income families, and a written statement in rebuttal as to the adverse economic effects that generating plants have had on the local communities.

20. The Citizens' issues, concerns and interests are thus plainly "relevant and material" as required per §3-107 for a grant of intervention.

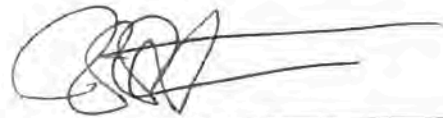
21. The Citizens request that all notices, documents and communications be served on their pro bono counsel, as follows:

Michael M. Hethmon, Esq.
Attorney at Law
8100 Croom Road
Upper Marlboro, MD 20772
croominfo@gmail.com

NOW THEREFORE,

For the reasons set forth above, the Citizens respectfully request that this Petition to Intervene be expeditiously granted as in the public interest, and that the Citizens be permitted, through counsel to participate collectively in this case with full rights as a joint intervenor party.


Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Michael M. Hethmon', written over a horizontal line.

Michael M. Hethmon
Maryland Bar
8100 Croom Road
Upper Marlboro, MD 20772
(301) 952-8489
Attorney for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby confirms that on August 17, 2015, the original and 18 copies of this Petition to Intervene were served on the Maryland Public Service Commission.

A handwritten signature in black ink, appearing to be 'M. Hethmon', written over a horizontal line.

Michael M. Hethmon, Esq.
Counsel for Petitioners

Attachment 3

December 18, 2012 Rejection of Administrative Complaint Without Prejudice,
EPA File No.: 10R-12-R9

August 2, 2012 Rejection Without Prejudice of Administrative Complaint,
EPA File No.: 09R-11-R10

March 11, 2010 Dismissal Without Prejudice of Administrative Complaint,
EPA File No.: 09R-09-R6

October 21, 2010 Dismissal Without Prejudice of Administrative Complaint,
EPA File No.: 09R-09-R6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 18 2012

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail#: 7004-1160-0002-3622-6062

In Reply Refer to:

EPA File No.: 10R-12-R9

Sayed Sadredin
Executive Director
San Joaquin Valley Unified Air Pollution Control District
1990 East Gettysburg Avenue
Fresno, CA 93726-0244

Re: Rejection of Administrative Complaint without Prejudice

Dear Mr. Sadredin:

This letter is in response to the administrative complaint filed with the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) on June 21, 2012. The complaint alleges that the San Joaquin Valley Unified Air Pollution Control District (SJV) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. § 2000d *et seq.*, and EPA's implementing regulations, found at 40 C.F.R. Part 7, which prohibit discrimination on the basis of race, color or national origin in federally assisted programs or activities. This is to notify you that after careful consideration, OCR is rejecting this administrative complaint without prejudice in light of pending litigation.

The complaint alleges that SJV's approval of Rule 3170, which assesses a \$12 fee on each motor vehicle registered in the San Joaquin Valley, will have a disparate economic impact on motor vehicle owners who are "largely low-income and people of color" in violation of Title VI of the Civil Rights Act and EPA's implementing regulations.

Since the filing of the complaint, OCR has learned that on October 19, 2012, Earthjustice filed a Petition for Review with the United States Court of Appeals for the Ninth Circuit challenging EPA's approval of Rule 3170. In situations where the allegations raised in the complaint involve the same facts that are also the subject of litigation in Federal court, such that the result of those proceedings could affect the outcome of the Title VI investigation, it is OCR's general practice to reject the complaint without prejudice. The petition filed by Earthjustice involves the same SJV rule that is the subject of the allegations in the Title VI complaint. Therefore, OCR is rejecting this complaint without prejudice.

If you believe that the discrimination alleged in this complaint is still occurring after conclusion of the litigation, you must refile this complaint within 60 calendar days following termination or conclusion of the litigation. In the event that you do resubmit your complaint, please include the file number 10R-12-R9. Please note that if your complaint is refiled, it will be subject to the standard jurisdictional requirements found in EPA's nondiscrimination regulations,¹ and OCR may choose not to proceed with a complaint investigation if issues relevant to the complaint are substantively decided by the Federal court or are otherwise resolved.

Regarding your allegation that SJV discriminated against motor vehicle owners who are "low-income", OCR cannot accept this allegation for investigation because neither Title VI nor EPA's nondiscrimination regulations prohibit discrimination based on income.

If you have any questions about the status of this complaint, please contact Jerett Yan of the OCR External Civil Rights Program at (202) 564-3113, via e-mail at yan.jerett@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Rafael DeLeon
Director

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (2399A)

Joann Asami, Title VI Coordinator
U.S. EPA Region 9
Mail Code: ORC-2

¹ 40 C.F.R. §§ 7.15 and 7.120.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG - 2 2012

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail# 7004-2510-0004-2241-5421

In Reply Refer to:

EPA File No. 09R-11-R10

Ted Sturdevant
Director
The Washington State Department of Ecology
Post Office Box 47600
Olympia, WA 98504-7600

Re: Rejection without Prejudice of Administrative Complaint

Dear Mr. Sturdevant:

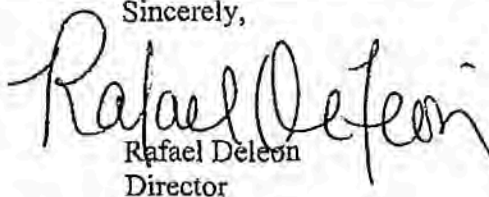
This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is rejecting without prejudice the complaint dated September 23, 2011. The complaint alleged that the Washington State Department of Ecology (WSDE), the Quincy Port District and the City of Quincy, WA, violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000 *et seq.*, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7. Specifically, the complaint states that WSDE violated Title VI by issuing a permit to allow for the expansion of the Microsoft Columbia Data Center in Quincy, WA. The complainant states that the expansion of the Microsoft Data Center will increase the emission of hazardous diesel engine exhaust particulate matter beyond acceptable levels.

OCR has determined that the matters raised in the complaint are currently the subject of ongoing litigation before the Pollution Control Hearings Board (PCHB) for the State of Washington. It is OCR's standard practice to reject without prejudice complaints where the same subject matter is involved in an adjudicative proceeding. A final decision in the pending litigation before the PCHB may impact the complaint filed with OCR. In addition, because the appeal of the permit is not yet final, and the issuance of the permit is central to the complaint, the complaint is not yet ripe for review. Therefore, while OCR will not accept the complaint at this time, the complainant may re-file the complaint against WSDE as indicated below.

Please note that the allegations against the WSDE may be re-filed within 60 calendar days of the conclusion of the adjudicative process, and OCR will review the re-filed complaint at that time. If you have any questions, please contact Samuel Peterson, of OCR's External Compliance Program, by telephone at (202) 564-5393, via e-mail at

peterson.samuel@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, DC, 20460-1000.

Sincerely,


Rafael Deleon
Director

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (2399A)

Clifford Villa
Office of General Counsel
U.S. EPA Region 10

Victoria Plata, EEO Officer
U.S. EPA Region 10
1200 Sixth Avenue
Mail Code: OMP_143
Seattle, WA 98101-3123



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 11 2010

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7009-2820-0002-1759-2855

In Reply Refer to:

EPA File No: 09R-09-R6

Mr. Gregory R. Mitchell
Post Office Box 74054
Baton Rouge, Louisiana 70807

Re: Dismissal without prejudice of Administrative Complaint

Dear Mr. Mitchell:

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is dismissing without prejudice your complaint dated October 2, 2009, alleging that the City of Baton Rouge has violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7.

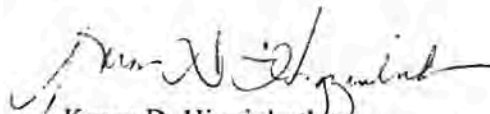
OCR's standard practice is to dismiss without prejudice administrative complaints where the same subject matter is involved in an adjudicative proceeding. A decision in the pending state case, 2009 – CA - 1076 in the State of Louisiana Court of Appeal, First Circuit, involving the North Waste Water Treatment Plant may impact the administrative complaint filed with OCR. Therefore, OCR will not accept your administrative complaint at this time. However, this complaint may be re-filed within 60 calendar days of the conclusion of the adjudicative process. If you choose to re-file the complaint, OCR will then proceed with its preliminary review to determine acceptance, rejection, or referral. Further, OCR may choose not to proceed with a complaint investigation if the allegations in the complaint were substantively decided by the state court.

Finally, it has come to our attention that the City of Baton Rouge is currently under a March 2002 Consent Decree to address concerns related to sewage treatment from the North Waste Water Treatment Plant, the South Waste Treatment Plant, and the Central Waste Treatment Plant. If you would like to know more information about the

Consent Decree please contact Ms. Mona Tate, the US EPA Region 6 point of contact. Ms. Tate can be reached at (214) 665-7152.

If you have any questions, please contact me at (202) 343-9224, via e-mail at farrell.ericika@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Karen D. Higginbotham
Director

Enclosure

cc: Katherin E. Hall, Assistant General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Manuela (Nellie) Roblez, EPA Region 6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 21 2010

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7004-1160-0002-3622-5942

In Reply Refer to:

EPA File No: 09R-09-R6

Mr. Gregory R. Mitchell
Post Office Box 74054
Baton Rouge, Louisiana 70807

Re: Dismissal without prejudice of Administrative Complaint

Dear Mr. Mitchell:

This letter concerns your complaint dated October 2, 2009, which you filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) alleging that the City of Baton Rouge has violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7. The complaint was dismissed without prejudice on March 11, 2010 because of related pending litigation.

OCR's standard practice is to dismiss without prejudice administrative complaints where the same subject matter is involved in a pending adjudicative proceeding. A decision has been issued by the State of Louisiana Court of Appeal, First Circuit, in case number 2009 – CA – 1076, which involved the North Waste Water Treatment Plant. You have indicated that you intend to appeal this decision. The adjudicative process, therefore, has not yet concluded and the court's decision in the appeal may impact the administrative complaint filed with OCR. Therefore, OCR will not accept your administrative complaint at this time.

However, this complaint may be re-filed within 60 calendar days of the conclusion of the adjudicative process. If you choose not to appeal the decision issued by the Court of Appeal, that would end the adjudicative process, and you should so inform my office immediately. If you choose to re-file the complaint, OCR will then proceed with its preliminary review to determine acceptance, rejection, or referral. Further, OCR may choose not to proceed with a complaint investigation if the allegations in the complaint were substantively decided by the state court.

If you have any questions, please contact Ms. Ericka Farrell of my staff at (202) 343-9224, via e-mail at farrell.ericka@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, reading "Rafael DeLeon". The signature is fluid and cursive, with the first name "Rafael" being more prominent and the last name "DeLeon" following in a similar style.

Rafael DeLeon
Acting Director

cc: Katherin E. Hall, Assistant General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Manuela (Nellie) Roblez,
EPA Region 6

DONNA F. EDWARDS
4TH DISTRICT, MARYLAND
HOUSE COMMITTEE ON
SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEE ON THE ENVIRONMENT
SUBCOMMITTEE ON SPACE, RANKING MEMBER

Congress of the United States
House of Representatives
Washington, DC 20515-2004

HOUSE COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
SUBCOMMITTEE ON WATER RESOURCES
AND ENVIRONMENT
www.donnaedwards.house.gov

June 20, 2016

Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

I am writing to you today about a constituent who wishes to file an inquiry with the Environmental Protection Agency regarding electrical power plants.

(b) 6 says he is responding to concerns raised by citizens in Brandywine, MD and assisting them in preparing and filing a civil rights complaint related to the proliferation of multiple electrical power plants being imposed in a predominantly African-American community without analysis of the potential adverse environmental health impacts on residents.

Attached you will find (b) 6 Privacy Release Form.

If you have any questions regarding this matter, please contact Katrina Owens in my district office at 301-516-7601. Please send all correspondence on the reference case to: 5001 Silver Hill Road, Suite 106, Suitland or fax to (301) 516- 7608, or by e-mail to katrina.owens@mail.house.gov.

I look forward in hearing from you.

Sincerely,

E

Donna F. Edwards
Member of Congress

Office of Congresswoman Donna F. Edwards
Privacy Release Form

Federal agencies are prohibited from releasing information concerning an individual to a third party under the Privacy Act of 1974. Please complete and sign this form, which will allow information regarding your concern to be released to the office of Congresswoman Donna Edwards or her designated representative for a period of one year from the date below.

(b) 6

Federal Agency you requesting assistance with: U.S. Environmental Protection Agency

Case/Receipt Number: n/a VA Claim Number n/a

Mortgage Loan Number n/a

Please state the nature of the request, problem or complaint on which you would like assistance. Also state your desired resolution to the issue. Include copies of all relevant documents and notices.

Patuxent Riverkeeper has joined with community based efforts and submitted a Federal Civil Right Complaint to the EPA (Title VI). Since the Federal Agencies has a history of slow or unsatisfactory investigations of these complaints we are hoping your Congressional Office will endorse our request for a timely meeting with agencies officials to discuss our environmental concerns and clarify the Federal agency plans to respond to or investigate the complaint. Likewise, to the extent you are comfortable doing so perhaps a letter to the cognizant Maryland State agencies encouraging direct engagement with the affected community and a diligent response would also be helpful. A copy of the filed complaint has already been provided to your office. Thank you

I authorize the Office of Congresswoman Donna Edwards to make inquiries on my behalf:

Signature

Date

Please return this signed form and all supporting documents to:

Office of Congresswoman Donna F. Edwards

Prince George's County Office

5001 Silver Hill Road, Suite 106

Suitland, Maryland 20746

301-516-7601 main

301-516-7608 fax

District Email: 4mddistrict@mail.house.gov

7/14/16



U.S. Department of
Transportation



Title VI Complaint, File DOT No. 2016-0361;
EPA File Nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3
July 14, 2016 · 10:00 a.m. – 12:00 p.m.
WJC North Conference Room 3530

Conference Number- 1-866-299-3188; Code (202-564-2088)

Agenda

I. Introductions

- Role of the U.S. Department of Transportation (DOT), the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ)

II. Case Resolution Process Overview

- Investigation (b) 5
- Informal Resolution (Informal Agreement between DOT, EPA and the respective Maryland Agencies; Alternative Dispute Resolution) (b) 5

III. Next Steps

IV. Questions & Answers

Notes

- _____
- _____
- _____

(b) 5

Martinez, Brittany

From: Martinez, Brittany
Sent: Tuesday, August 02, 2016 1:48 PM
To: 'Caro-Lopez, Howard (OST)'; Fitzpatrick, Ryan (OST)
Cc: Covington, Jeryl; Biffi, Betsy
Subject: RE: Meeting with Mattawoman

Hi Howard and Ryan-

I am not sure if you have had the opportunity to read through the letter that Mr. Shavitz submitted yesterday. I have not, but intend to this afternoon, but Jeryl has and she provided a brief synopsis that I wanted to share with you all asap. It appears that their letter has responded to some of your initial draft questions. I will look through and make some recommendations for possible modifications.

Jeryl's synopsis:

Briefly, the attached correspondence addresses some of the concerns raised in the complaint and information previously provided to OCR by the developer in response to the complaint. The following assessment is not all-inclusive of each of the correspondence's details ; but should provide enough specifics to describe the developer's position and relevant points.

Public participation: The facility has reportedly provided information related to project development with the community through a variety of communication methods. As documented, communication was completed by the following: notification to the public via mailings to adjacent property owners and the community (reportedly by PSC, Mattawoman, and Maryland-National Capital Park and Planning Commission); advertisements were placed in the newspapers (*Enquirer-Gazette*, and *Maryland Independent*); established of two (2) project websites; issued press releases; placement of information in the public libraries (Prince George's County libraries-Surratts-Clinton Branch Library and the Charles County Public Library, Waldorf West); conducted formal and informal community outreach; met with elected officials, citizens, minority leaders within the Brandywine community and key stakeholders; and held conferences and hearings.

Air quality: The project was evaluated under the NSR provisions of the CAA and the state's SIP. The facility's potential emissions were reportedly modelled in accordance with state and federal requirements. The complainants alleges that the proper modelling data was not utilized (re: utilizing Reagan National Airport versus Joint Base Andrews which was determine not useful for the modelling protocol) and offsets were not appropriate. Reportedly, the more conservative data was utilized in performing the modeling; thus, evaluating "worse-case" scenarios which concluded that the results reportedly complied with the AQ requirements. Secondly, as reported, the facility is utilizing an offsets of 1.3:1 for NO_x and VOCs and the State agency's concurred that the offset are acceptable for 'beneficial area'. As noted, "Maryland law requires that these offsets *directly benefit* the area in which the Project is located. Therefore, Mattawoman Energy's offsets will be obtained from the "same area" as the Project, or a different area that includes emissions that "have been demonstrated to contribute to a violation of the [NAAQS]"¹⁵ in the Brandywine area."

Additionally, the community concerns include an air monitoring request/health assessments due to the disproportionate alleged impact(s) to a minority community. The correspondence acknowledges that the modelling and AQ evaluations results were in compliance with NAAQS (possible rebuttal presumption concern).

Noise: The local limits are reportedly 90 and 55 dBA, daytime and nighttime, respectively. The facility acknowledges that modeling occurred in consideration of these limits and notes that a 4± dBA variation may occur during full load operation (transient operations). The CPCN requires regular monitoring and mitigation.

Site selection: Alternative sites were reportedly considered by Mattawoman. The correspondence notes that PSC do not determine the location of power plants nor the type of power plant development (response comment to the solar and wind power utility plant considerations). Reportedly, state law only establishes siting criteria for proposed utility locations. Reportedly, the utility conducted an eight-month site evaluation and considered a number of sites in Charles and Prince George's County that would reportedly comply with zoning, and satisfy engineering and feasibility evaluations. As documents, some of the alternative sites were not for sale.

"Mattawoman, however, conducted an eight-month site identification process, which identified and considered a number of alternative sites in Charles County and in Prince George's County (both inside and outside of Brandywine) that would meet engineering, feasibility and zoning requests. With the majority of the identified sites not available for sale to Mattawoman, the Brandywine site was selected."

Location criteria: The correspondence documents the reasoning for the location determination as follows: "...the Brandywine site included: (i) an existing transmission grid at a nearby point that can accept injections of electricity without causing grid reliability problems; (ii) a nearby interstate natural gas pipeline with sufficient mainline capacity to deliver the needed natural gas; and (iii) a nearby source of water with sufficient capacity to provide required quantities for cooling purposes. Second, the site was zoned as I-2 (Heavy Industrial), and thus allowed for power plants. Finally, the owners of the site and the areas needed for rights-of way would sell or grant easements, which was critical to site selection given that Mattawoman Energy lacks condemnation authority.

Reportedly, the location has maintained consistent zoning for 40 years. As presented, infrastructure and naturally occurring resources are needed for power plant development.

Traffic congestion: The correspondence reiterates that traffic was included in the AQ modelling which is an expectation since transportation is usually identified as a major emission source. Furthermore, the correspondence denotes modifications in the traffic patterns in the area due to new controls, off-setting work schedules, and providing public safety for traffic control at unsignalized intersections. Although not identified, the correspondence indicates that the CPCN has requirements to address some of the traffic concerns ("The CPCN also included four conditions that will, *inter alia*, require temporary improvements at intersections within the study areas "to reduce impacts to traffic operations and to maintain safety").

One of the alternatives that has been requested by the complainants is to provide public transportation (evidently, Mattawoman is not in the transportation business) and PSC could not impose the development of a public transportation system in the certificate issuance.

Economic impacts: The correspondence indicates economic development organizations may have been involved with assuring the availability of adequate of service in the region and the State of Maryland. Likewise, the SW-MAAC of one of the utility companies (PJM) identified a concern with economic development in MD. The correspondence eludes that this region has capacity concerns and repeats a statement from previously submitted documents about aging coal-fired plants that are retiring.

Property values: While not a direct T6 issue, the correspondence documents pre-existing conditions that have been measured in establishing the tax rates for this area. Hence, the assumption is that with the influx of new tax revenue, the area may have access to new utilities which will increase property values. Likewise, the correspondence documents local job creations, protection of open and recreational areas, and tax revenues.

(b) (7)(A), (b) 5



From: Caro-Lopez, Howard (OST) [mailto:howard.caro-lopez@dot.gov]
Sent: Monday, August 01, 2016 11:05 AM
To: Martinez, Brittany <Martinez.Brittany@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Cc: Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: RE: Meeting with Mattawoman

Hi Brittany,

Thanks for getting back to us on your availability for Wednesday's meeting with Mattawoman. Ryan is out today and tomorrow on training, so I wanted to make sure you got a response from us before then. I think it's a good idea to have Jeryl join us on Wednesday and take advantage of her technical knowledge.

Below are some preliminary questions that we drafted to guide the discussion. We don't intend for this to be a script, mainly some focal points to frame the conversation. I've also attached a copy of the agenda Ryan drafted for the meeting, at the request of Mr. Shavitz.

In the meantime, feel free to contact me if you have any other questions.

(b) (7)(A), (b) 5

From: Martinez, Brittany [mailto:Martinez.Brittany@epa.gov]
Sent: Monday, August 01, 2016 10:42 AM
To: Fitzpatrick, Ryan (OST); Caro-Lopez, Howard (OST)
Cc: Covington, Jeryl
Subject: RE: Meeting with Mattawoman

Hi Ryan-

I'm back. I hope you all are doing well. I am able to participate in this Wednesday's interview with the Mattawoman counsel. I have reviewed the agenda and it looks good. I understand that we are keeping our attendees number low from both sides, but I would like to bring Jeryl Covington with us for this interview. She will be able to bring some insight and will have some questions from the technical standpoint that will be very helpful for this discussion.

Additionally, I understand that DOT has some questions in mind to ask for this meeting. Can you share those, so we can reduce the likelihood of redundancy? Thanks!

From: Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]

Sent: Friday, July 29, 2016 2:12 PM

To: Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Goodwill, Rosanne (PHMSA) <rosanne.goodwill@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Martinez, Brittany <Martinez.Brittany@epa.gov>; Bachle, Laura <Bachle.Laura@epa.gov>

Subject: Meeting with Mattawoman

All:

I just received a call from Ian Shavitz, who confirmed that Mattawoman will meet with us on Wednesday, August 3, at 3pm. The meeting will be held at their offices in Dupont Circle. A confirmation e-mail with more details should be forthcoming from Mr. Shavitz.

(b) (7)(A), (b) 5



Mr. Shavitz asked for us to provide an agenda for the meeting. I put together a very general agenda here, which you can feel free to tinker with. I will be off-site at a training on Monday and Tuesday, and unfortunately will have little access to my e-mail. Once we have the agenda where we like it, please send it to Mr. Shavitz ahead of the meeting.

With any questions, logistical or otherwise, please reach out to Howard Caro-Lopez at (202) 366-1669. He'll be attending the meeting with Mattawoman as well. Howard will be able to reach me.

Thanks,

Ryan

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
W78-312
(202) 366-1979

Martinez, Brittany

From: Martinez, Brittany
Sent: Tuesday, August 02, 2016 1:48 PM
To: 'Caro-Lopez, Howard (OST)'; Fitzpatrick, Ryan (OST)
Cc: Covington, Jeryl; Biffi, Betsy
Subject: RE: Meeting with Mattawoman

Hi Howard and Ryan-

I am not sure if you have had the opportunity to read through the letter that Mr. Shavitz submitted yesterday. I have not, but intend to this afternoon, but Jeryl has and she provided a brief synopsis that I wanted to share with you all asap. It appears that their letter has responded to some of your initial draft questions. I will look through and make some recommendations for possible modifications.

Jeryl's synopsis:

Briefly, the attached correspondence addresses some of the concerns raised in the complaint and information previously provided to OCR by the developer in response to the complaint. The following assessment is not all-inclusive of each of the correspondence's details ; but should provide enough specifics to describe the developer's position and relevant points.

Public participation: The facility has reportedly provided information related to project development with the community through a variety of communication methods. As documented, communication was completed by the following: notification to the public via mailings to adjacent property owners and the community (reportedly by PSC, Mattawoman, and Maryland-National Capital Park and Planning Commission); advertisements were placed in the newspapers (*Enquirer-Gazette*, and *Maryland Independent*); established of two (2) project websites; issued press releases; placement of information in the public libraries (Prince George's County libraries-Surratts-Clinton Branch Library and the Charles County Public Library, Waldorf West); conducted formal and informal community outreach; met with elected officials, citizens, minority leaders within the Brandywine community and key stakeholders; and held conferences and hearings.

Air quality: The project was evaluated under the NSR provisions of the CAA and the state's SIP. The facility's potential emissions were reportedly modelled in accordance with state and federal requirements. The complainants alleges that the proper modelling data was not utilized (re: utilizing Reagan National Airport versus Joint Base Andrews which was determine not useful for the modelling protocol) and offsets were not appropriate. Reportedly, the more conservative data was utilized in performing the modeling; thus, evaluating "worse-case" scenarios which concluded that the results reportedly complied with the AQ requirements. Secondly, as reported, the facility is utilizing an offsets of 1.3:1 for NO_x and VOCs and the State agency's concurred that the offset are acceptable for 'beneficial area'. As noted, "Maryland law requires that these offsets *directly benefit* the area in which the Project is located. Therefore, Mattawoman Energy's offsets will be obtained from the "same area" as the Project, or a different area that includes emissions that "have been demonstrated to contribute to a violation of the [NAAQS]"¹⁵ in the Brandywine area."

Additionally, the community concerns include an air monitoring request/health assessments due to the disproportionate alleged impact(s) to a minority community. The correspondence acknowledges that the modelling and AQ evaluations results were in compliance with NAAQS (possible rebuttal presumption concern).

Noise: The local limits are reportedly 90 and 55 dBA, daytime and nighttime, respectively. The facility acknowledges that modeling occurred in consideration of these limits and notes that a 4± dBA variation may occur during full load operation (transient operations). The CPCN requires regular monitoring and mitigation.

Site selection: Alternative sites were reportedly considered by Mattawoman. The correspondence notes that PSC do not determine the location of power plants nor the type of power plant development (response comment to the solar and wind power utility plant considerations). Reportedly, state law only establishes siting criteria for proposed utility locations. Reportedly, the utility conducted an eight-month site evaluation and considered a number of sites in Charles and Prince George's County that would reportedly comply with zoning, and satisfy engineering and feasibility evaluations. As documents, some of the alternative sites were not for sale.

"Mattawoman, however, conducted an eight-month site identification process, which identified and considered a number of alternative sites in Charles County and in Prince George's County (both inside and outside of Brandywine) that would meet engineering, feasibility and zoning requests. With the majority of the identified sites not available for sale to Mattawoman, the Brandywine site was selected."

Location criteria: The correspondence documents the reasoning for the location determination as follows: "...the Brandywine site included: (i) an existing transmission grid at a nearby point that can accept injections of electricity without causing grid reliability problems; (ii) a nearby interstate natural gas pipeline with sufficient mainline capacity to deliver the needed natural gas; and (iii) a nearby source of water with sufficient capacity to provide required quantities for cooling purposes. Second, the site was zoned as I-2 (Heavy Industrial), and thus allowed for power plants. Finally, the owners of the site and the areas needed for rights-of way would sell or grant easements, which was critical to site selection given that Mattawoman Energy lacks condemnation authority.

Reportedly, the location has maintained consistent zoning for 40 years. As presented, infrastructure and naturally occurring resources are needed for power plant development.

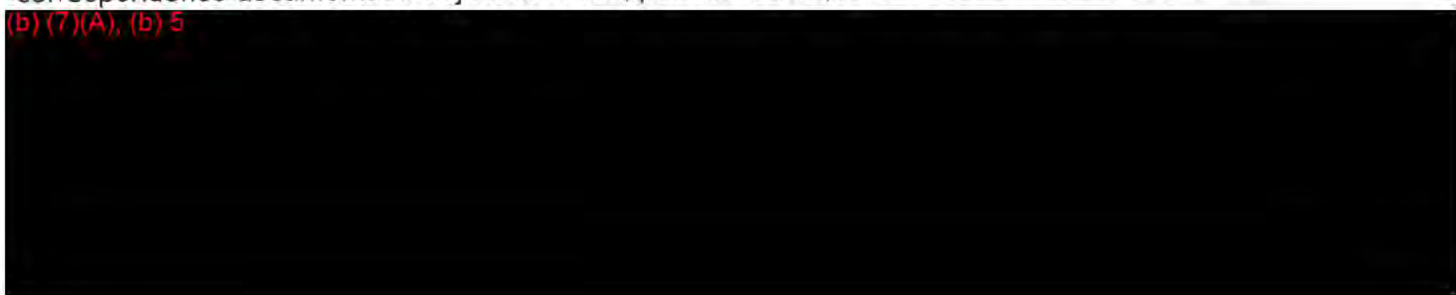
Traffic congestion: The correspondence reiterates that traffic was included in the AQ modelling which is an expectation since transportation is usually identified as a major emission source. Furthermore, the correspondence denotes modifications in the traffic patterns in the area due to new controls, off-setting work schedules, and providing public safety for traffic control at unsignalized intersections. Although not identified, the correspondence indicates that the CPCN has requirements to address some of the traffic concerns ("The CPCN also included four conditions that will, *inter alia*, require temporary improvements at intersections within the study areas "to reduce impacts to traffic operations and to maintain safety").

One of the alternatives that has been requested by the complainants is to provide public transportation (evidently, Mattawoman is not in the transportation business) and PSC could not impose the development of a public transportation system in the certificate issuance.

Economic impacts: The correspondence indicates economic development organizations may have been involved with assuring the availability of adequate of service in the region and the State of Maryland. Likewise, the SW-MAAC of one of the utility companies (PJM) identified a concern with economic development in MD. The correspondence eludes that this region has capacity concerns and repeats a statement from previously submitted documents about aging coal-fired plants that are retiring.

Property values: While not a direct T6 issue, the correspondence documents pre-existing conditions that have been measured in establishing the tax rates for this area. Hence, the assumption is that with the influx of new tax revenue, the area may have access to new utilities which will increase property values. Likewise, the correspondence documents local job creations, protection of open and recreational areas, and tax revenues.

(b) (7)(A), (b) 5



From: Caro-Lopez, Howard (OST) [mailto:howard.caro-lopez@dot.gov]
Sent: Monday, August 01, 2016 11:05 AM
To: Martinez, Brittany <Martinez.Brittany@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Cc: Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: RE: Meeting with Mattawoman

Hi Brittany,

Thanks for getting back to us on your availability for Wednesday's meeting with Mattawoman. Ryan is out today and tomorrow on training, so I wanted to make sure you got a response from us before then. I think it's a good idea to have Jeryl join us on Wednesday and take advantage of her technical knowledge.

Below are some preliminary questions that we drafted to guide the discussion. We don't intend for this to be a script, mainly some focal points to frame the conversation. I've also attached a copy of the agenda Ryan drafted for the meeting, at the request of Mr. Shavitz.

In the meantime, feel free to contact me if you have any other questions.

Best,

Howard

(b) (7)(A), (b) 5



From: Martinez, Brittany [mailto:Brittany.Martinez@epa.gov]
Sent: Monday, August 01, 2016 10:42 AM
To: Fitzpatrick, Ryan (OST); Caro-Lopez, Howard (OST)
Cc: Covington, Jeryl
Subject: RE: Meeting with Mattawoman

Hi Ryan-

I'm back. I hope you all are doing well. I am able to participate in this Wednesday's interview with the Mattawoman counsel. I have reviewed the agenda and it looks good. I understand that we are keeping our attendees number low from both sides, but I would like to bring Jeryl Covington with us for this interview. She will be able to bring some insight and will have some questions from the technical standpoint that will be very helpful for this discussion.

Additionally, I understand that DOT has some questions in mind to ask for this meeting. Can you share those, so we can reduce the likelihood of redundancy? Thanks!

From: Fitzpatrick, Ryan (OST) [<mailto:ryan.fitzpatrick@dot.gov>]

Sent: Friday, July 29, 2016 2:12 PM

To: Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Goodwill, Rosanne (PHMSA) <rosanne.goodwill@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Martinez, Brittany <Martinez.Brittany@epa.gov>; Bachle, Laura <Bachle.Laura@epa.gov>

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I have been working on a number of questions to ask Mattawoman about during our conversation, mostly focused on obtaining the background of the process for this facility from them, including how they chose the site location, how they went through the permitting process, and what types of mitigation they intend to include for expected impacts on the community. I want to get from them the story as to why they chose Brandywine for their facility, and what kinds of interactions have they had with the public regarding the plant.

Mr. Shavitz asked for us to provide an agenda for the meeting. I put together a very general agenda here, which you can feel free to tinker with. I will be off-site at a training on Monday and Tuesday, and unfortunately will have little access to my e-mail. Once we have the agenda where we like it, please send it to Mr. Shavitz ahead of the meeting.

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Thanks,

Ryan

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
W78-312
(202) 366-1979

Brandywine / TB Southern Region Neighborhood Coalition

The Mission at the B/TB Coalition is to create and maintain an environment where business and community will prosper by supporting all projects and activities which will contribute to the positive growth and quality of life.

Delivered by email and United States Postal Service (hard copy).

November 9, 2017

Gina M. Cerasani, Ph.D.
Conflict Prevention and Resolution Center
U.S. Environmental Protection Agency

Re: DOT# 2016-0361
EPA File Nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3

Dear Ms. Cerasani:

This is to notify the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR) with the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), of the decision of the Brandywine TB Southern Region Neighborhood Coalition (BTB Coalition), ("complainant") regarding the current Alternative Dispute Resolution Process (ADR). This ADR process was initiated in response to the alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) against the Maryland Public Service Commission (PSC), the Maryland Department of the Environment (MDE), and the Maryland Department of Natural Resources (MDNR) (collectively, "recipients") filed by the complainant.

(b) (7)(A)



1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and
2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin in violation of Title VI.

(b) (7)(A)



Brandwine / TB Southern Region *Neighborhood Coalition*

The BTB Coalition, November 9, 2017

Page 2 of 3 – Ms. Cerasani

(b) (7)(A)



Sincerely,

Tamara Ray
BTB Coalition

Brandwine / BTB Southern Region Neighborhood Coalition

The BTB Coalition November 9, 2017

Kamita Gray, President

Page 3 of 3 – Ms. Cerasani

cc:

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Director, Office of Civil Rights
Department of Transportation
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1200 New Jersey Ave, SE
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Administrative Files
BTB Coalition
ECCB
2BridgeCDX Trustees

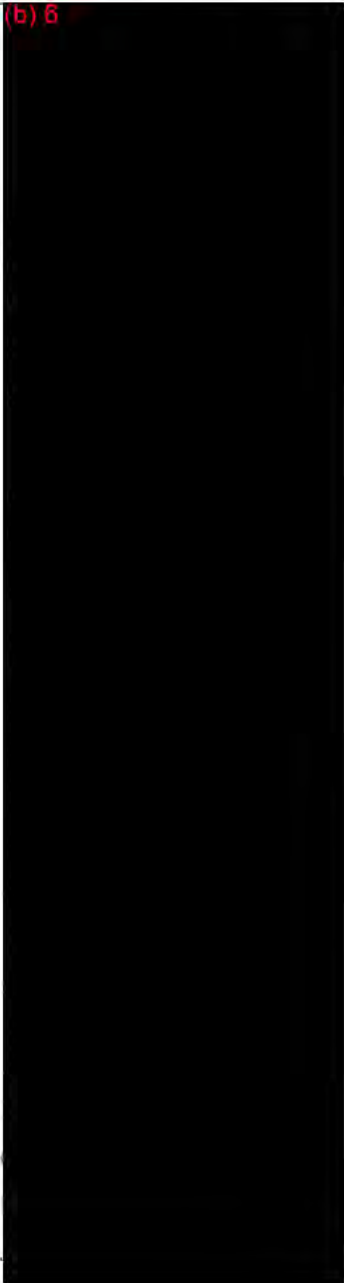
**PUBLIC OUTREACH AND PARTICIPATION
FOR THE MATTAWOMAN ENERGY CENTER PROJECT**

Mattawoman Energy and the Maryland Public Service Commission (PSC) provided the public with timely notice of the Project and numerous opportunities to participate in the CPCN process. Mattawoman Energy launched an extensive community outreach program in November 2011, which included contacting local citizens and key stakeholders; making 22 multi-day trips to meet with elected officials, citizens, minority leaders within the Brandywine community and key stakeholders; setting up two Project websites; issuing press releases, and placing its CPCN Application in the Prince George's County Library for public inspection. The PSC noticed and held conferences and hearings on the Project where Brandywine residents attended and testified. The PSC also accepted public comments during a comment period that was extended on two occasions, the public, including Brandywine residents and organizations, also were afforded "interested person" status in the CPCN proceeding and thus received copies of all CPCN filings.

MULTI-DAY TRIPS TO MEET WITH ELECTED OFFICIALS, CITIZENS AND STAKEHOLDERS		
PRE-CPCN APPLICATION	POST-CPCN APPLICATION	
December 12, 2011	September 6, 2013	June 9, 2015
October 28, 2012	November 12, 2013	July 21, 2015
February 5, 2013	December 3, 2013	August 9, 2015
April 2, 2013	February 3, 2014	January 6, 2016
April 23, 2013	March 18, 2014	April 26, 2016
May 14, 2013	June 3, 2014	May 17, 2016
May 22, 2013	August 19, 2014	June 2, 2016
	March 9, 2015	

NOTICE AND HEARING INFORMATION			
HEARING TYPE	LOCATION	DATE	NOTICE
Pre-Hearing Conference	Volunteer Fire Department of Brandywine	Aug. 23, 2013	Display advertisement in the August 15, 2013 Enquirer-Gazette.
Evidentiary Hearing	PSC Commission's Headquarters (Baltimore)	July 21, 2015	Publication of notices during the four preceding weeks in the <i>Enquirer-Gazette</i> .
Public Hearing	Volunteer Fire Department of Brandywine	July 21, 2015	Publication of notices during the four preceding weeks in the <i>Enquirer-Gazette</i> .
Public Hearing	Volunteer Fire Department of Brandywine	Aug. 17, 2015	Placing newspaper notice in <i>Enquirer-Gazette</i> .
Public Hearing	Charles County Public Library (Waldorf West branch)	Aug. 20, 2015	Publication of notices for four weeks in the <i>Maryland Independent</i> .

KEY STAKEHOLDER MEETINGS	
GROUP	REPRESENTATIVES
CIVIC AND TRADE GROUPS	<p>Baden Aquasco Homeowners Association</p> <p>Brandywine North Keys Homeowners Association</p> <p>Prince George's Business Roundtable</p> <p>Union representatives from all the building trades</p> <p>Southern Maryland Black Chamber of Commerce</p> <p>Prince George's County NAACP</p> <p>Prince George's County Chamber of Commerce</p>
CHURCH LEADERS	<p>Bishop James M. Briscoe, Free Gospel Church of Bryans Road</p> <p>Dr. Michael A. Freeman, Spirit of Faith Christian Center</p> <p>Rev. Willie Hunt, New Community Church of God in Christ</p> <p>Rev. Reginald Kearney, Ministers Alliance of Charles County and Vicinity</p> <p>Rev. Harry Seawright, Union Bethel AME Church</p>
PRINCE GEORGE'S COUNTY OFFICIALS	<p>David Iannucci, Assistant Deputy CAO for Economic Development and Public Infrastructure at Prince George's County</p> <p>Thomas Himler, Deputy Chief Administrative Officer, Budget, Economic Development, Finance & Administration</p> <p>Aubrey Thagard, Assistant Deputy Chief Administrative Officer</p> <p>Miranda Jackson, MBE Compliance Manager, Prince Georges County</p> <p>Gwen McCall, former President and CEO of Prince George's County Economic Development Corporation</p>
ELECTED OFFICIALS	<p>U.S. Representative Steny Hoyer</p> <p>Nichelle Schoultz (U.S. Senator Barbara Mikulski)</p> <p>Terrance Taylor, Deputy District Director at Office of Congressman Steny H. Hoyer</p> <p>Mel Franklin, County Council member and former Chairman</p> <p>Maia Hunt Estes, Chief of Staff, Lt. Governor</p> <p>Maryland State Delegate Michael Jackson</p> <p>Maryland State Delegate Pena-Melnyk</p> <p>The Late Maryland State Delegate James E. Proctor, Jr.</p> <p>David R. Craig, Maryland Secretary of Planning</p>
JOINT BASE ANDREWS	<p>Base Commander</p> <p>DRMO Site Engineering Personnel</p> <p>Air Force counsel</p>

INTERESTED PERSONS RECEIVING NOTICE IN CPCN PROCEEDING		
ORGANIZATIONS	RESIDENTS	PUBLIC/AGENCY OFFICIALS
<p>Eric Gangloff Member-Board of Directors Greater Baden and Aquasco Citizens Association</p> <p>James P. Long President, Mattawoman Watershed Society</p> <p>Martha Ainsworth Chair, Prince George's Sierra Club Group</p> <p>The Mattawoman Watershed Society, Inc. *</p> <p>Brandywine/TB Southern Region Neighborhood Coalition</p>	<p>(b) 6</p> 	<p>Honorable Andrea Harrison Chair, Prince George's County Council</p> <p>Fern V. Piret Director, Department of Planning</p> <p>Honorable Peter F. Murphy President of County Commissioners</p> <p>Peter Aluotto Director, Department of Planning & Growth Management</p> <p>Matthew K. Segers, Esq. Potomac Electric Power Company</p>
* Notice received via legal counsel		